

THE STATE PLANNING COUNCIL

State of Rhode Island and Providence Plantations RULES OF PROCEDURE

**Adopted Pursuant to
Chapter 42-35 and
Section 42-11-10(e)(4)
General Laws of Rhode Island**

Division of Planning
One Capitol Hill
Providence, Rhode Island 02908-5870

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RULE I

RULES OF PROCEDURE: ORGANIZATION AND OPERATION OF THE STATE PLANNING COUNCIL

The following are the rules for organization and operation of the State Planning Council as required by Section 42-1 1 -1 0 of the General Laws of Rhode Island.

Rule 1: Name 1.01

The name of this Council shall be the State Planning Council as established by Section 42-1 1 -1 0(b) of the General Laws of Rhode Island.

Rule 2: Organization and Purpose

2.01

Chapter 42-11 of the General Laws of 1956 entitled "Department of Administration" was amended by Chapter 126 of the Public Laws of 1970 to establish a statewide planning program in the Department of Administration in order to promote the proper development of the state's human, economic, and physical resources, and thereby promote the health, safety, and general welfare of its citizens by placing the state's comprehensive planning activities on a more permanent and continuing basis by creating an agency, for comprehensive statewide planning within the executive branch.

2.02

Section 42-11-10 of the General Laws of Rhode Island directs the Statewide Planning Program to prepare, adopt, and amend strategic plans for the development of the state's human, economic and physical resources. Section 42-11-10(b) and (d) establish a state planning council to provide policy advice and guidance to state planning activities.

Planning is a means of identifying and addressing issues or solving problems through application of the planning process.- a continuous systematic method of making decisions that influence the future. The planning process involves determining where we are, where we want to go, and how we can move from the first point to the second. In all applications it includes understanding the general situation or context, inventorying resources and constraints, identifying and analyzing alternative courses of action, selecting one of these (the "plan"), recommending ways to execute the plan, monitoring the result, and adjusting the plan or the process as required.

The planning responsibilities of the Statewide Planning Program can, encompass any activity or concern of state government in which utilization of planning procedures and techniques is appropriate. The principal areas of emphasis are:

The State Guide Plan: A series of functional elements that promote the orderly growth and development of the state. They typically recommend goals and

policies, and describe programs and projects designed to achieve them. Plan elements address a broad range of social, economic, and environmental issues that characterize the process of growth and change in the Atlantic urban region. The time horizon is usually twenty years, with appropriate milestones within this period.

Strategic Planning: A process of allocating resources in ways that will accomplish stated objectives. Mission statements by the Chief Executive or others are the basis for selection of critical topics that generally cut across traditional lines of authority, have significant effect on a major segment of society, and require an urgent response. The time frame is typically one-to- five years.

Other established areas of Program operations include planning assistance to local governments, governmental management and coordination, special projects designed to implement strategic plans or the state guide plan, and the planning information base.

2.03

The purposes of the State Planning Council are to provide representation of a broad range of interests and viewpoints in the state planning process, to guide the Statewide Planning Program staff in coordinating planning and development activities of governmental agencies at all levels and the private sector, and to approve all statements of goals and policies and all elements of the State Guide Plan.

Rule 3: Definitions

3.01

The term "Council" means the State Planning Council.

3.02

The term "Secretary" means the Secretary of the State Planning Council designated by Section 42-11-10(d)(6) of the General Laws.

3.03

The term "State Guide Plan" means all statements of goals and policies and plans or plan elements adopted by the State Planning Council in accordance with Section 42-11-10(e) of the General Laws of Rhode Island, together with all statements of goals and policies and plans or plan elements adopted by its predecessor body, the Policy committee of the Rhode Island Statewide Comprehensive Transportation and Land Use Planning Program, as established by Section 3 of the Inter-agency agreement between the Rhode Island Development Council and Department of Public Works dated May 27, 1964, as amended on March 25, 1965 (Rhode Island Public Transit Authority) and on July 12, 1965 (Department of Business Regulation). Elements of the State

Guide Plan shall remain in effect until amended or repealed by the State Planning Council.

3.04

The word "proposal" means those plans, programs, projects, actions, activities, or undertakings which must be approved by the State Planning Council, including applications for federal financial, technical or other assistance, and strategic plans.

3.05

The term "applicant" means any state, local or private agency or individual seeking approval of a proposal by the State Planning Council.

3.06

The term "consistent with" when used in reference to a finding of agreement with the State Guide Plan means that the proposed document or action is fully in accord with or compatible with every applicable element of the Plan in terms of the objectives sought and the results anticipated. Differences in procedure or detail that do not modify the Plan objectives or results will not necessarily cause a finding of inconsistency. The term "conformity with" and similar terms requiring agreement with the Plan shall be considered synonymous with the term "consistent with" for purposes of these rules.

Rule 4: Powers and Duties

4.01

State planning activities are carried out by the Statewide Planning Program, comprised of a committee structure and a staff agency. The Statewide Planning Program (SPP) is part of the executive branch of state government. In guiding the SPP, the Council is assigned the following powers and duties:

- (a) to adopt strategic plans and the long-range State Guide Plan and to modify or amend any of these, and to recommend and encourage implementation of these goals, policies, plans and programs by the Governor, the General Assembly, the departments and agencies of state government, and other public and private parties within the state.
- (b) to review and comment on the proposed annual work program and budget of the Statewide Planning Program prior to their approval by the Director of Administration.
- (c) to appoint standing and special committees as required to assist the Council or staff.

4.02

Other duties of the Statewide Planning Program and the State Planning Council are prescribed from time to time by state statute, executive order, written or oral direction by the Governor, or by federal law and/or regulation when assigned or designated by the Governor.

4.03

The powers and duties of the Council are executed in accordance with these Rules for Organization and Operation insofar as possible.

Rule 5: Members of the Council

5.01

The membership of the Council is established in two classes: voting and advisory members.

5.02

[Superseded by Chapter 90-361 of the Public Laws]

5.03

The advisory members of the Council shall be representatives of federal or regional agencies who may be invited to serve by the Governor or by the Council. The term of appointment is indefinite.

5.04

All members shall serve for the period of appointment and until their successors are appointed, while eligible to serve in the class or subclass from which appointed.

Rule 6: Officers of the Council

6.01

The Director of Administration is designated as Chairman by Section 42-11-10(d)(1) of the General Laws of Rhode Island.

6.02

[Superseded by Chapter 90-361 of the Public Laws] 6.03

The Chief or Acting Chief of the Statewide Planning Program is designated as the Secretary of the Council by Section 42-11 -10(d)(6) of the General Laws.

6.04

In the absence of the Chairman, the Vice Chairman, and the Secretary, a regular or special meeting of the Council shall be called to order by the senior member of the Office of State Planning staff who is present. The first order of business shall then be the election of a Temporary Chairman by the Council, to preside for the remainder of that meeting. Any other voting or nonvoting member of the Council may serve as Temporary Chairman.

Rule 7: Duties of Officers

7.01

The Chairman shall preside at all meetings of the Council. In his or her absence, the Vice Chairman, the Secretary, or the Temporary Chairman shall preside. The officer presiding shall call for each item in the order appearing on the agenda, unless otherwise determined by vote of the Council. The officer presiding shall recognize members desiring to speak and may, in his/her discretion, authorize any other person to address the Council. He/she shall receive motions and seconds, conduct votes on each question, and determine the prevailing side. The officer presiding shall vote on each question.

7.02

The Vice Chairman shall perform the duties and exercise the powers of the Chairman in the absence or incapacity of the Chairman. In case of the resignation or death of the Chairman, the Vice Chairman shall perform the duties and exercise the powers of the Chairman until such time as a new Chairman is appointed.

7.03

The Secretary shall make arrangements for all meetings of the Council, shall notify all members thereof, and shall prepare an agenda for each meeting. He/she shall keep accurate and complete records of attendance and of the proceedings of the Council, recording all votes and performing all duties incident to this office. The Secretary shall also keep written minutes of the Council meetings, and shall transmit the actions and recommendations of the Council to the Governor or to others as appropriate.

Rule 8. Attendance

8.01

Members who miss more than three consecutive regular meetings without having submitted to the Council Secretary a notice of any reason for such absence shall be asked by letter to become more active on the Council. In the event of further absence, the Council may decide by majority vote to send a recommendation to the appointing authority, asking that the appointment be reconsidered.

8.02

Each Council member may appoint not more than two designees to represent the member at Council meetings. Designees of voting members shall have full voting privileges. The name of designees must be submitted in writing to the Secretary by the member to be represented.

Rule 9. Meetings

9.01

Regular meetings shall be held the second Thursday of each month. The time and place of the meetings shall be determined by the Secretary. A quorum shall be a majority of the voting membership.

9.02

Special meetings may be held when necessary. The need for a special meeting may be brought to the attention of the Secretary by any Council member. The Secretary shall then consult the Chairman or, in his/her absence, the Vice Chairman, who shall decide if the meeting shall be held and shall designate the time and place for such meetings.

9.03

Prior to each meeting, the Secretary shall prepare an agenda. The agenda for each regular meeting shall include the following:

- 1 . Approval of the minutes of the previous meeting.
2. Chief's progress report.
3. Items for action or discussion.
4. Other business.

Any member of the Council may place an item on the agenda of any regular meeting, under the heading "Other Business". Members of the staff, federal or state agencies, local governments, and the public may request to have an item placed on the agenda. Such request must be submitted to the Secretary in writing no later than two weeks before a regularly scheduled meeting. Copies of the agenda shall be sent to each Council member at least 10 days before a regular Council meeting. Agendas shall also be sent to any person or organization requesting them.

9.04

All persons appearing before the Council, either on their own behalf or in a representative capacity, shall conform to standards of reasonable and orderly conduct. If any person does not conform to such standards, the Council may decline to permit such person to appear before it in any proceeding.

Rule 10: Meeting Records and Voting

10.01

Minutes of each Council meeting shall be compiled by the Secretary no later than two weeks after the meeting.

10.02

The Secretary shall record the names of all members of the Council present or at each regular or special meeting as part of the minutes of that meeting.

10.03

[Superseded by Chapter 16-330 of the Public Laws] 10.04

10.04

A member voting on the prevailing side of a question may move for reconsideration of that question. Such motion shall be made and acted upon not later than adjournment of the first regular meeting following the meeting at which the question was initially decided.

Rule 11: Filling a Vacancy

11.01

Should a vacancy occur on the Council either through resignation or for other reasons, the Secretary shall notify the appointing authority. The Council may suggest the names of persons to the appointing authority to fill any vacancy.

Rule 12: Procedures for Council Action

12.01: The State Guide Plan

12.01.01

A draft of a plan or plan amendment proposed for adoption as an element of the State Guide Plan (see Rule 3.03) or a proposal to modify or repeal any element thereof shall be submitted to the Secretary of the Council no later than 15 days before a regular meeting of the Council in order to be considered for review at that meeting.

12.01.02

The Secretary shall place the draft plan, amendment, or proposal on the agenda of the next regular or special meeting. The Secretary shall notify each member of the Council in writing, of the receipt of the draft no later than 10 days before the meeting at which the draft is to be reviewed. The notice shall contain a brief description of the plan.

Copies of the complete written plan shall be furnished to each member. The Secretary will notify the applicant (if other than the Program staff) and participating agencies and interested parties of the date of the Council meeting at which the draft will be presented.

12.01.03

The preliminary draft shall be presented to the Council at the scheduled meeting by the applicant or the Secretary, together with the recommendation of the Technical Committee thereon (if any). The Council may vote to receive the preliminary draft for further review, or refer it to the Technical Committee if not previously considered by that body. Revised drafts shall be reviewed by the Council and/or the Technical Committee as necessary.

12.01.04

The Council may appoint a special committee or assign a standing committee to review and assist in the preparation or review of the plan draft.

12.01.05

As part of the review process, copies of the draft shall be released for review by the Council and summaries of the report may be sent to municipal, state, regional and federal agencies, major interest groups, libraries, the public, and the information media as directed by the Council.

12.01.06

All revisions resulting from the review process shall be compiled, reviewed, and approved by the review committee (if any) and the Technical Committee and incorporated into the draft or into an addendum to the draft.

12.01.07

The revised draft shall be submitted to the Council. The Council may vote to receive the draft for the purpose of holding a public hearing, or for further consideration prior to authorizing a public hearing thereon.

12-01.08

One or more public hearings shall be held on each proposed plan element, amendment, or repeal of an element prior to adoption thereof.

12.01.09

A revised draft of the State Guide Plan element that incorporates such modifications as are derived from the public hearing and other review of the draft shall be mailed to the Council members. At the next Council meeting, following discussion, the Council shall vote to adopt, reject, modify and adopt, or defer action on the plan element or amendment under consideration.

12.01.10

Elements of the State Guide Plan which are adopted, amendments thereto, or actions repealing any element of part thereof, shall be filed with the Secretary of State by the Secretary.

12.02: Rules of Procedure

12.02.01

A draft of any proposed rules of procedure or amendments thereto shall be submitted to the Secretary of the Council no later than 15 days before a regular meeting of the State Planning Council in order to be considered for review at that meeting.

12.02.02

The Secretary shall place the draft rules or amendment on the agenda of the next regular or special meeting. The Secretary shall mail a copy or a summary of the draft to each member of the Council no later than 10 days before the Council meeting at which the draft is to be reviewed. The Secretary will notify the applicant (if other than the Program staff) and participating agencies and interested parties of the date of the Council meeting at which the draft will be presented.

12.02.03

The draft shall be presented to the Council at the scheduled meeting by the applicant or the Secretary. The Council may vote to receive the draft for the purpose of further review or of holding a public hearing thereon.

12.02.04

One or more public hearings shall be held on each proposed rule or amendment.

12.02.05

A revised draft of the rules of procedure which incorporates such modifications as are derived from the public hearing and other review of the draft shall be mailed to the Council members. At the following Council meeting, the Council shall move to adopt, reject, modify and adopt, or defer action on the proposed rules of procedure.

12.03: Work Program

12.03.01

The Rhode Island Statewide Planning Program is charged with preparation and maintenance of plans for the physical, economic and social development of the state, with providing planning services to the Governor and the operating agencies of state government, and with coordinating the actions of state, local, and federal agencies and private individuals within the framework of the state's development goals and plans. The work program outlines the activities that the Program proposes to undertake in meeting these responsibilities.

12.03.02

A draft work program will be prepared annually by the Program staff, with the assistance of cooperating public agencies and private organizations as appropriate. The draft shall describe the activities proposed to be undertaken over a period of three years, with the initial year described in detail and including estimates of the personnel and costs required to undertake the activities proposed. The program year shall be the fiscal year used by the State of Rhode Island.

12.03.03

The Secretary shall decide when to place the proposed work program on the agenda. The Secretary shall mail a copy or summary of the draft to each member of the Council no later than 10 days before the Council meeting at which the proposal is to be reviewed.

12.03.04

The proposed work program shall be presented with a staff recommendation to the Council at the scheduled meeting. The Council shall review and provide comments on the proposed work program and its financing to the Director of Administration as provided for by Section 42-11 -1O(e)(3) of the General Laws of Rhode Island.

12.03.05

[Reserved]

12.03.06

Sitting as the Metropolitan Planning Organization (23 CFR 450.112), the Council shall review the Unified Work Program for Transportation Planning and, if acceptable, the Council may endorse the plan as consistent with the rules of procedure for certification review and endorsement.

12.03.07

Sitting as the Overall Economic Development Program Committee (13 CFR 304), the Council shall review the economic development planning activities proposed as part of the work program and shall advise the Director of Administration as to whether these will permit the State to comply with the requirements of the Public Works and Economic Development Act of 1965, as amended.

12.04: Findings of Consistency

12.04.01

Legislation prescribing the functions and powers of the Statewide Planning Program direct that plans and management programs developed by the Coastal Resources Management Council be consistent with the State Guide Plan (Title 46, Chapter 23, Section 6A); and require that projects of the Port Authority and Economic Development Corporation conform to the 'State Guide Plan (Title 42, Chapter 46, Section 14). The Federal Highway Program Manual (Vol. 7, Chapter 9, Paragraph 6(B)) requires that the Council determine whether the transportation plan and program is consistent with the state's approved Air Quality Implementation Plan. Similar findings may be required in the future by other legislation or administrative regulations. These rules establish the procedures for findings of consistency by the Council.

12.04.02

Requests for a determination of consistency of proposals shall be submitted to the Secretary of the Council. All requests shall be in written form and shall contain a general description of the proposed project, the document (if any) on which the finding is to be based, and citation of the statute or regulation requiring that a finding of consistency be made by the Council.

12.04.03

The Secretary shall place the proposed project on the agenda of the next regular or special meeting. The Secretary shall mail a copy or summary of the proposal to each member of the Council no later than 10 days before the Council meeting at which the proposal is to be reviewed. The Secretary will notify the applicant of the date of the Council meeting at which the proposal will be presented.

12.04.04

The Secretary shall review each proposal received for consistency as established in its citation. Those projects which are required to be consistent with the State Guide Plan will be found to be consistent only when it is clearly in accordance with all of the applicable provisions of the State Guide Plan.

12.04.05

The Secretary shall present the project proposal to the Council with an advisory report and recommendation on the project. Following discussion, the Council shall move to approve, reject, modify and approve, or deter action on the proposed finding.

12.04.06

If the Council approves the proposal the Secretary shall notify the applicant in writing.

12.04.07

If the Council finds that a proposal is not consistent as required, the Secretary shall prepare a report describing the respects in which the proposal was found to be deficient. A copy of this report shall be sent to the applicant.

12.04.08

The determination of the Council on a proposal shall be in writing and stated in the record. Each determination of the Council shall be accompanied by a concise and explicit statement of the principal reasons for the determination reached by the Council.

12.04.09

The Council may adopt additional or different procedures for the review of specified types of proposals. Such procedures shall be adopted by rule and shall replace or supplement the procedures set forth herein.

12.05: Short Term Financial Programs

12.05.01

The Council is the review and/or approval authority for a number of short term financial programs, including the Transportation Improvement Program and the Overall Economic Development Program. Programs requiring review and approval or comment shall be submitted to the Secretary of the Council no later than 15 days before a regular meeting of the Council in order to be considered at that meeting. The description of each proposal shall include, but not be limited to, the following information: (1) the identity of the applicant; (2) the geographic location of the proposal; (3) a brief description of the proposal by type, general size or scale, and persons to be affected; (4) estimated cost; (5) other agencies or bodies participating in or reviewing the proposal; (6) alternatives considered; and (7) any such additional information the Secretary deems necessary to a finding of consistency or conformance with the State Guide Plan or other action required.

12.05.02

The Secretary will determine whether or not each project description complies with rule 12.05.01. If the proposal does comply, the Secretary shall place the proposal on the agenda of the next regular or special meeting. The Secretary shall mail a copy of the proposal or a summary to each member of the Council no later than 10 days before the Council meeting at which the proposal is to be reviewed. The Secretary shall notify the applicant of the acceptance of the project proposal and the date of the Council review. Insufficient requests shall be returned to the applicant together with a statement of the ways in which the proposal does not comply with rule 12.05.01.

12.05.03

The proposal shall be presented to the Council by the applicant or by the Secretary of the Council. The Council may, in its discretion, hold a public hearing on any short term financial program under review, and may develop and adopt criteria or procedures for selection or inclusion of particular projects in a financial program. Following discussion and a staff recommendation, the Council shall determine whether or not the proposal complies with the State Guide Plan (if applicable). The Council shall move to adopt the project proposal and approve the allocation of funds, reject, modify and approve, or defer action upon the proposal.

12.06: Certification of Planning Activities

12.06.01

Compliance with planning requirements which are prerequisites to federal grants to the state or its municipalities or others is a major objective of the Statewide Planning Program. These rules establish the procedure for review and certification of planning activities by the State Planning Council.

12.06.02

Requests for a certification of planning activities shall be submitted to the Secretary of the Council no later than 15 days before the next regular meeting of the Council in order to be considered for review at that meeting.

12.06.03

The Secretary shall place the proposed certification on the agenda of the next regular or special meeting. The Secretary shall mail a copy or a summary of the proposal to each member of the Council no later than 10 days before the Council meeting at which the proposal is to be reviewed. The Secretary shall notify the applicant of the date of the Council meeting at which the proposal will be presented.

12.06.04

The proposed certification shall be presented to the Council at the scheduled meeting. Following discussion and a staff recommendation, the Council shall move to adopt and approve, reject, modify and approve, or defer action on the proposal.

12.07: Endorsement Pursuant to Federal Funding Requirements

12.07.01

Many federal regulations require specific documents as prerequisites for federal funding eligibility. The following are the rules for Council approval of the endorsement pursuant to federal funding requirements.

12.07.02

The proposal shall be submitted to the Secretary of the Council no later than 15 days before a regular meeting of the Council in order to be considered for review at that meeting.

12.07.03

The Secretary shall place the proposal on the agenda of the next regular or special meeting. The Secretary shall mail a copy or a summary of the proposal to each member of the Council no later than 10 days before the Council meeting at which the proposal is to be presented to the Council at the scheduled meeting. Following discussion and a staff recommendation, the Council shall move to adopt and approve, reject, modify and approve, or defer action on the proposal.

12.08: Draft Environmental Impact Statements or Assessments

12.08.01

Draft environmental impact statements or assessments which are submitted to the Program for review shall be recorded by the Secretary. Notice of those statements received, by title and brief description, shall be given in the Monthly Progress Report.

12.08.02

The Secretary shall determine whether each draft statement received pertains to or is of interest to this state. If so, he/she shall notify those parties likely to be interested in the statement of its receipt, and availability for review and comment. The period for receipt of comments on the draft will be stated.

12.08.03

The Office of State Planning is responsible for review of draft statements and the comments thereon by interested parties and the staff. The staff shall make recommendations on each statement reviewed and transmit its recommendation, together with all comments received, to the originator and/or other appropriate agency.

12.08.04

The Council reserves the authority to review and comment on any draft environmental impact statement or assessment submitted to the Program.

12.09: Functional Classification of the Highway System

The Technical Committee shall adopt and maintain a plan for the functional classification of the highway system which conforms to the transportation element of the State Guide Plan.

12.1 0: Air Quality Element

The Council shall vote on those elements of the State Guide Plan dealing with air quality in the following manner:

(a) A proposed element of the State Guide Plan or an amendment or repeal thereof shall be considered and voted upon in accordance with Sections 12.01.01 to 12.01.09. If the vote thereon is unanimous, the motion before the Council shall be recorded as passed, and the Secretary of the Council shall file the necessary documentation with the Secretary of State.

(b) If the vote is not unanimous, the presiding officer shall direct the Secretary of the Council to determine whether the document or action under consideration was prepared with financial assistance under Section 175 of the Clean Air Act (PL 95-95).

(c) If so, the presiding officer will call for a second vote on the motion. This vote will be conducted as follows:

(1) Officials of local government appointed to the Council under Section 42- 11 -10(d)(2) of the General Laws shall vote as individuals.

(2) State and public members appointed to the Council under Section 42- 11 - 10(d)(1) through (6) and (8) shall, by majority vote, cast one vote.

The presiding officer will tally the votes cast and announce the result.

(d) The Secretary shall file the document or action in question, as approved in accordance with this voting procedure, with the Secretary of State as required by Section.

12.01.10 of these rules.

12.11: Advisory Reports to the Energy Facility Siting Board

12.11.01

Chapter 42-98 requires submission of advisory reports to the Energy Facility Siting Board on proposed major energy facilities as follows.

Section 42-98-9 (D): The Division of Planning, in cooperation with the Governor's Office of Housing, Energy, and Intergovernmental Affairs, shall report on the need for each proposed facility.

Section 42-98-9 (E): The State Planning Council shall report (1) on the socio-economic impact of each proposed facility, and (2) on its consistency with the State Guide Plan.

12.11.02

Avoidance of **ex parte** communications requires that the Associate Director of Administration for Planning/Secretary of the State Planning Council, who is also a member of the Energy Facility Siting Board, not participate in any way in the preparation or discussion of advisory reports or action thereon. Similarly, the Associate Director/Secretary may not participate in any way in the consideration of the same proposals through any other procedure.

12.11.03

All staff activities of the Division of Planning that are related to the Energy Facility Siting Board shall be supervised by the Chief of Strategic Planning or, in his/her absence, by the Assistant Chief, Strategic Planning. At all times when such matters are before the State Planning Council, the Chief or Assistant Chief shall serve as Secretary of the Council. The Associate Director/Secretary shall not attend or participate in such meetings or parts thereof.

12.11.04

All other consideration of proposed major energy facilities that are, or are likely to be, subject to action by the Energy Facility Siting Board, shall be conducted by the Review Coordinator, under the supervision of the Chief of Strategic Planning. None of the documents pertaining to such consideration, including forms, shall be signed by the Associate Director/Secretary.

12.11.05

All staff of the Division of Planning must insure that no contact or material concerning a proposed major energy facility that is, or is likely to be, subject to action by the Energy Facility Siting Board reaches the Associate Director/Secretary, except through the Coordinator of the Board or at public hearings and open meetings conducted by the Board.

Rule 13: Emergency Procedures

13.01

The Council, by a two-thirds vote of those voting members or their designees present at a regular or special meeting, may waive or modify any provision of Rule 12 when, in its judgment, such action would be in the best interests of the people of the state. If a mandatory public hearing or the minimum notice thereof is waived, any action taken as a result of such waiver shall be effective for a maximum of 120 days. An action so taken may subsequently be repeated and given full effect if the applicable requirements for public hearings are observed in their entirety.

Rule 14: Public Hearings

14.01

Public hearings shall be conducted in accordance with the Administrative Procedures Act and the Rules for Public Hearings adopted by the Council, and shall be held before the Council adopts, amends, or repeals:

- (a) Statements of goals and policies for the future development of the state.
- (b) Elements of the long range State Guide Plan.
- (c) Council Rules of Procedure.

14.02

[Reserved]

14.03

Public hearings may be scheduled as part of regular or special Council meetings or at other times as directed by the Council. When appropriate, a public hearing shall be held in the general area particularly affected by the action or document under consideration.

Rule 15: Committees

15.01

The committee structure that assists the Council to perform state planning activities is comprised of standing committees and special committees. The standing committees, including a Technical Committee, a Human Services Review Committee, and a Physical Resources Review Committee, provide a permanent and continuous mechanism for review of projects, programs and activities of both the staff and other related agencies. Special committees are appointed by the Council as required to assist

the Council, standing committees, or staff in a specific functional or operational area, and usually for a limited period of time.

15.02

Members of all committees are appointed by the Council. Council members shall prepare a slate of names for committee positions that may include members from the floor. Following a month long consideration period, the Council shall name committee members by vote. The persons receiving the majority vote shall be invited to serve on the committee for a term to be determined at the time of appointment.

15.03

Unless otherwise provided by the Council at the time of creation, each committee shall select from its membership a chairman and vice chairman, and a secretary. Their terms of office shall be one year. The duties of the officers shall be the same as set forth for officers of the Council.

15.04

Whenever a committee member fails to attend three consecutive scheduled meetings, the committee shall notify the Chairman of the Council of such failure and may recommend the member's removal from the committee. Meetings missed because of illness shall not be counted for this purpose.

5.05

Standing committees shall meet once a month unless otherwise determined by the Council. Special committees shall meet as required. The time and place of the meetings shall be determined by the Secretary. A majority of each committee shall constitute a quorum. Special meetings of standing or special committees may be called in the manner provided by Rule 9.02.

15.06

Prior to each meeting, the Secretary of each committee shall prepare an agenda. Members of the Council, staff, committee, interested agencies, or the public may propose to have an item placed on the agenda. The proposal must be submitted in writing to the Secretary no later than two weeks before the meeting. Copies of the agenda shall be sent to each committee member at least 10 days before the meeting.

15.07

Minutes of each committee meeting will be recorded by the Secretary and forwarded to the Secretary of the Council. The Secretary of each committee shall record the names of all members of that committee present or absent at each regular or special meeting as part of the minutes of that meeting.

15.08

Should a vacancy occur on the committee either through resignation or for other reasons, the Secretary shall notify the Council. The Council shall appoint a new member to fill the vacancy.

Rule 16: Technical Committee

16.01

The Technical Committee shall constitute the permanent advisory committee provided for by Section 42-11-10(e)(5) and shall assist the Council and the staff in technical matters by reviewing work in progress, by responding to special questions on technical matters, and by providing liaison between the staff and other agencies involved in technical studies. The Technical Committee shall adopt rules of procedure which facilitate performance of these duties, which shall be subject to concurrence by the Council.

16.02

As each major study is completed, the draft report thereon shall be referred to the Technical Committee for review. Program reports and special reports recommending goals or policies, plans, and implementation programs are reviewed by the Technical Committee before Council action is requested, and recommendations on the proposals are made by the Committee to the Council.

16.03

The Technical Committee shall be comprised of representatives of state agencies, local government, and the public who serve as voting members; and representatives of federal agencies or others invited by the Council to serve as advisory members. Voting members shall be appointed by name to serve for a term of two years, and may be reappointed. Advisory members shall serve for a period determined by the agency represented.

16.04

Members shall be appointed to the Technical Committee in recognition of the technical expertise which they can bring to Program activities; contact and liaison with parties affected by or involved in these activities; provision of information which is essential to the proper conduct of the planning process, and representation by agencies or areas not represented on the Council.

16.05

A recommendation on a project, proposal or activity by the Technical Committee will require a two-thirds vote of those members present.

16.06

Agendas and minutes of all regular and special meetings of the Technical Committee shall be furnished to each member of the Council.

Rule 17: Rules of Order

17.01

Robert's Rules of Order shall be followed in those situations where these Rules for Organization and Operation are silent.

Rule 18: Amendments

18-01

These Rules may be amended in accordance with Rule 12.02.

Rule 19: Access to Files and Records

19.01

It is the policy of the Statewide Planning Program that its files and records shall be available for inspection by the public to the fullest possible extent consistent with the Program's ability to pursue effectively its activities, with the rights of individuals to privacy, with the rights of persons to necessary confidentiality of proprietary information, and with the need of the Program for frank policy deliberations.

19.02

All files and records of the Program are available for public inspection unless they are specifically exempted by these rules or unless their disclosure is prohibited by state or federal law or by order of a court of competent jurisdiction.

19.03

The following categories of files and records, or information in such files and records, of the Program shall not be available for inspection:

19.03.01

Individual personnel files. Access to these files shall be limited to the individual concerned, persons in a supervisory capacity to the individual within the Department of Administration, and clerical personnel employed by the Office of State Planning who are responsible for preparation and maintenance of personnel records and files.

19.03.02

Trade secrets and other proprietary information shown by their provider, to the satisfaction of the Chief, Office of State Planning, to be of such character that their confidentiality should be maintained in order to preserve the provider's competitive position in industry, or that their disclosure would detrimentally affect the provider's business. If the Chief and the provider fail to agree as to the applicability of this exemption to certain materials, those materials, along with any application to which they might be appended, will be returned to the provider. No such material shall subsequently be brought before the Council or its committees as the basis for appeal or reconsideration of any action taken.

19.03.03

Notes and records relating to negotiations relative to contractual arrangements for consulting services, until a contract is executed.

19.03.04

Survey data disclosing information about individuals, organizations, or firms, the disclosure of which would be contrary to assurances given to the provider or which would constitute an invasion of personal privacy.

19.04

If a record contains both disclosable and nondisclosable information, the disclosable portion will be disclosed unless that portion cannot reasonably be segregated from the rest of such record.

19.05

A request for inspection of records shall reasonably describe the records sought in a way that will permit their identification and location by the Program; such request need not be in any particular form. The custodian of the records may require the request to be in writing if necessary for the orderly administration of the Program. If the description of records sought in the request is not sufficient to allow the Program to identify and locate the requested records, the Secretary will notify the requester that additional information is needed. The Program will make every reasonable effort to assist in the identification and description of records sought and to assist the requester in formulating his request. Inspection of records shall be during regular business hours of the Office of State Planning, unless other arrangements are made with the Secretary. [Note: Also see Rule VI.]

19.06

A denial of inspection of records sought under these regulations may be appealed to the Chairman of the Council, in writing.

19.07

If copies of records are provided, fees for reproduction shall be charged at the rate of \$0.20 per page of stationery of legal-size documents if ten or more pages are copied.

Rule 20: State Data Center

20.01

The Rhode Island Statewide Planning Program is the lead agency of the Rhode Island Data Center. As such, it is responsible for providing program management and coordination in addition to library services and handling of inquiries.

20.02

The Office of State Planning may charge individuals and/or organizations for the reasonable cost of providing certain information.

20.03

State agencies may obtain one or two sets of the most current Metropolitan Map Series free of charge. The request must be made to the Chief, Office of State Planning. Said request must be in writing and must be signed by the agency head.

Cities and towns may obtain one copy of those maps within the Metropolitan Map Series which covers their city or town. The request must be made to the Chief, Office of State Planning. Said request must be in writing and must be signed by the Chief-Elected Official.

Arrangements to obtain other copies of the Metropolitan Map Series may be made. The organization or individual will be billed directly by the reproduction company for any costs incurred.

CERTIFICATION

I certify that this document was adopted as a Rule of Procedure by the State Planning Council on September 12, 1985, and that it was amended on April 12, 1990, in accordance with Section 42-11 -1O(e)(4) of the General Laws.

Daniel W. Varin, Secretary

RULE II RULES FOR PUBLIC HEARINGS

The following are the rules for public hearings required to be held by the State Planning Council under provisions of Section 42-11 -10(e)(1) of the General Laws of Rhode Island.

Rule 1: Organization

1.01

Section 42-11-2 of the General Laws of 1956 was amended by Chapter 126 of the Public Laws of 1970 to establish a statewide planning program in the Department of Administration in order to promote the proper development of the state's human, economic and physical resources, and thereby promote the health, safety, and general welfare of its citizens by placing the state's comprehensive planning activities on a more permanent and continuing basis by creating an agency for comprehensive statewide planning within the executive branch.

1.02

By reason of Section 42-11-10(f) of the General Laws, the Office of State Planning is the principal staff agency of the State Planning Council for preparing and/or coordinating strategic plans for the comprehensive management of the state's human, economic, and physical resources.

1.03

A state planning council is established by Section 42-11-10(b) and (e) to provide policy advice and guidance to state planning activities. It is the duty of the state planning council to:

- (a) Provide representation of a broad range of interests and viewpoints in the state planning process.
- (b) Assist the Office of State Planning in coordinating the planning and development activities of all state, local, and private bodies.
- (e) Review the proposed annual work program and budget request of the Office of State Planning.
- (d) Adopt goals and policies for the growth and development of the state, and the state guide plan and to modify or amend any of these. All of these shall be adopted in accordance with procedures set forth in the General Laws, Chapter 42-35.

Rule 2: Definitions

2.01

The term "Council" whenever used in these regulations shall be deemed to refer to the State Planning Council.

The term "Chairman" when used in connection with proceedings before the State Planning Council shall also include the "Vice-Chairman" in the absence of the "Chairman" or any voting member of the Council designated by the "Chairman".

Rule 3: Practice Before the Council

3.01

Any individual may be heard on his behalf or by his representative, or the individual may file a written statement with the Secretary of the Council.

3.02

All persons appearing before the Council either on their own behalf or in a representative capacity shall conform to the standards of ethical conduct required of attorneys before the courts of Rhode Island. If any such person does not conform to such standards, the Council may decline to permit such person to appear before it in any proceeding.

Rule 4: Hearings

4.01: General:

Hearings required by law or executive order shall be conducted in accordance with these rules and regulations. Where no hearing is required by law or executive order, the Chairman may nevertheless in his/her discretion conduct informal hearings or investigations in such manner and according to such procedures as he/she may deem appropriate.

4.02: Notice:

The Council before holding required hearings shall:

(1) Give at least a 20 day notice of its action. Such notice will contain a statement of either the terms or substance of the action or description of the issues, the time of hearing, and the place of the hearing. The notice shall also state the particular manner in which interested persons may present their views. This notice shall be placed in a newspaper or papers of general circulation and shall be mailed to those persons who have requested that their names and addresses be placed on a mailing list maintained by the Statewide Planning Program.

(2) All interested persons shall be given a reasonable opportunity to give their views on the particular plan before the Council. These views may be presented orally or in writing.

(a) If the Council finds there is an imminent peril to the public health, safety or welfare it can adopt a plan without a prior 20 day notice or with a notice period shorter than 20 days. In such cases a rule so promulgated is effective for up to 120 days with the option to renew it for an additional 90 day period. In any event any plan so promulgated can later be adopted in accordance with the rules outlined herein.

(b) No plan shall be adopted as an element of the state guide plan and no statement of goals and policies for future development shall be adopted unless these rules are adhered to; provided, however, that any plan or statement not adopted in accordance with these rules and regulations cannot be challenged after 2 years from its effective date.

(3) The proposed plan or other material on which the hearing is to be held shall be available for public review in the office of the Statewide Planning Program from the date notice of the hearing is given to the date of the hearing, during normal business hours, Monday through Friday, except on legal holidays.

(4) Any notice of a public hearing given may be withdrawn by publishing notice to that effect in a newspaper or paper of general circulation and by mailing written notice to all those requesting that their names be entered on the mailing list to receive notice of public hearings.

4.03: Rules of Evidence

Irrelevant, immaterial, or unduly repetitious evidence shall be excluded by the Chairman. The rules of civil procedure used in the Superior Court of Rhode Island may be followed, but the Chairman shall not be bound to follow these rules when there are facts not susceptible of proof under the civil rules of procedure; provided, however, such facts are of a type commonly relied upon by reasonably prudent men.

(a) Documentary evidence may be received in copy form when originals are not available.

(b) Notice can be taken of judicially cognizable facts as well as facts of generally recognized technical or scientific facts within the agency's specialized knowledge; but parties must be notified of such actions.

4.04: Decisions and Orders

Any final decision or order on a particular plan or statement of development goals or policies, brought before the Council, shall be in writing or stated in the record. Any final decision of the Council shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If proposed findings of facts were

submitted the Council shall include in its decision rulings upon each proposed finding. Any finding or decision of the Council shall be made available to the public.

4.05: Record of the Hearing

A record shall be taken, and kept on file at the offices of the Statewide Planning Program of each hearing held by the Council. Such record shall include, but is not limited to, a list of those attending the hearing and a summary of the oral statements made. All written statements received by the Secretary in accordance with Rule 4, Section 4.02(2) shall be appended to the record.

4.06: Statements - Written or Oral

All statements, comments, and or questions, whether written or oral, must be directed to the Chairman of the Council.

Rule 5: Construction

5.01

These rules shall be interpreted and applied in a manner consistent with the purpose of the public hearings required by Section 42-11 -1O(e)(1) of the General Laws of Rhode Island, which shall be to promote citizen participation in the planning process, to encourage public discussion of statements of goals and policies and elements of the state guide plan, and to insure that the public has adequate opportunity to advise the Council of its views on any statement or plan element under consideration.

5.02

In the event of any conflict - between these rules and regulations and The Administrative Procedures Act, Chapter 42-35 of the General Laws of 1956 as amended, the provisions of the Administrative Procedures Act shall govern.

NOTE: All references to the "Office of State Planning" were changed to the "Division of Planning" by Article 29, Chapter 85-181 of the Public Laws.

CERTIFICATION

I certify that this document was adopted as a Rule of Procedure by the State Planning Council on September 12, 1985, in accordance with Section 42-11 -1O(e)(4) of the General Laws.

RULE III

RULES OF PROCEDURE: REVIEW OF PROJECT PROPOSALS BY THE RHODE ISLAND PORT AUTHORITY AND ECONOMIC DEVELOPMENT CORPORATION

The following are the rules for review of and action upon projects proposed by the Rhode Island Port Authority and Economic Development Corporation as required by Section 42-64-14(a) of the General Laws of 1956, as amended.

Rule 1: Purpose

1.01

Legislation creating the Rhode Island Port Authority and Economic Development Corporation requires that projects planned and carried out by the Corporation conform to the applicable provisions of the State Guide Plan. These rules establish procedures for making the determinations required by this provision and for notifying the Corporation thereof.

Rule 2: Definitions

2.01

The following words and terms shall have the following meanings wherever used in these rules.

2.02

The word, "Council" shall mean the State Planning Council established by Section 42-11-10(b) of the General Laws of Rhode Island.

2.03

The word "Corporation" shall mean the Rhode Island Port Authority and Economic Development Corporation established by Section 42-64-4 of the General Laws of 1956, as amended.

2.04

The term "State Guide Plan" shall mean all statements of goals and policies and plans or plan elements in effect at the time a proposal is received, as adopted by the State Planning Council in accordance with Section 42-11-10(e)(1) of the General Laws of Rhode Island, or Executive Order Number 10, dated June 22, 1970, together with all statements of goals and policies and plans or plan elements adopted by its predecessor body, the Policy Committee of the Rhode Island Statewide Comprehensive Transportation and Land Use Planning Program, as established by Section 3 of the

Inter-Agency agreement between the Rhode Island Development Council and Department of Public Works dated May 27, 1964, as amended on March 25, 1965 (Rhode Island Public Transit Authority) and on July 12, 1965 (Department of Business Regulation).

2.05

The word "project" shall mean those actions, activities, or undertakings included within the definition of a "project" or a "port project" in Section 42-64-3(r) of the General Laws of 1956, as amended.

Rule 3: Procedure

3.01

Requests for a determination of conformity of proposed projects with the State Guide Plan shall be submitted by the Corporation to the Secretary of the Council. All requests shall be in written form and shall contain a general description of the proposed project describing in reasonable detail its location, nature, and size. The description shall include, but not be limited to the following information when by reason of location, nature and size of the proposed project the Secretary finds that such specific information is relevant to a finding of conformance or non-conformance with the State Guide Plan: information disclosing the project's probable need for water supply, wastewater treatment, solid waste disposal, transportation access, and parking, and reliable estimates of the number of persons to be employed, the amount of primary energy to be consumed or produced, and the amount and type of air pollution emissions, wastewater discharges, and solid waste to be produced.

3.02

The Secretary will determine whether or not each request complies with rule 3.01. If so, the Secretary shall record the date on which the request was received and shall determine the deadline for completion of the review process. Written acknowledgement of the receipt of such requests shall be given to the Executive Director of the Corporation. Insufficient requests shall be returned to the Executive Director of the Corporation together with a statement of the ways in which each request does not comply with rule 3.01.

3.03

The Secretary shall notify each member of the Council, in writing, whenever a request is accepted and acknowledged. Notification shall also be given to the governing body of each city and town affected by the proposal. The notice shall contain a brief description of the project. Copies of the complete written request shall be furnished to each member and city or town affected on request.

3.04

The Secretary shall review each proposed project received and acknowledged in accordance with rule 3.02 for conformity with each applicable provision of the State Guide Plan. The Secretary shall review the primary and direct effects and the secondary and indirect effects of each project, and shall evaluate its long and short-term effects. The cumulative effects of various projects similar in either geographic location or functional purpose shall be assessed. A proposed project shall be found to conform to the State Guide Plan only when it is clearly in accordance with and consistent with all of the applicable provisions of the State Guide Plan. An advisory report briefly summarizing the proposed project, the results of the review, and the findings of the Secretary as to whether the proposal does or does not conform to the State Guide Plan shall be prepared and submitted to all members of the Council and to the Executive Director of the Corporation, in writing, as expeditiously as possible and not more than 21 days following receipt of the proposals.

3.05

If the Secretary finds and reports that a proposed project conforms to all applicable provisions of the State Guide Plan, the report shall so state and all members of the Council shall have ten days in which to enter any objections to the finding. If no objections are received, the Chairman of the Council, or the Vice Chairman in the absence of the Chairman, shall notify the Executive Director, in writing, that the proposed project does conform to the State Guide Plan. Copies of this notification shall be sent to all members of the Council. The notification and the Secretary's report shall be made available to the public in accordance with Rule 3.08.

3.06

Objections to a finding of the Secretary concerning the conformity of any proposed project to the State Guide Plan shall be made to the Secretary in writing. If any objection is made, the proposed project shall be considered at a regular or special meeting of the Council, which shall be held not later than 45 days following receipt of the proposal by the Secretary.

3.07

If the Secretary finds that a proposed project does not conform to all applicable provisions of the State Guide Plan, his report shall describe those respects in which the proposal does conform and those respects in which it does not conform. The proposed project and this report shall be considered at a regular or special meeting of the Council, which shall be held not later than 45 days following receipt of the proposal by the Secretary. The Council shall determine whether the project is in conformance with the State Guide Plan. If a proposed project would contribute to achievement of one or more goals, policies or recommendations of the State Guide Plan, but would be inconsistent with or conflict with other goals, policies or recommendations, the Council may determine that the proposed project is in substantial conformance with the plan. The

Chairman, or the Vice Chairman in the absence of the Chairman, shall notify the Executive Director of the Corporation of the Council's determination, in writing, not later than 45 days following receipt of the proposal by the Secretary.

3.08

The determination of the Council on a proposed project made under Rule 3.07 shall be in writing and stated in the record. Each determination of the Council shall be accompanied by a concise and explicit statement of the principal reasons for and against the determination reached by the Council, incorporating therein the reasons for overruling the considerations urged for a contrary determination. Each determination of the Council and each supporting statement shall be mailed to the governing body of each city and town affected by the proposal and shall be made available to the public upon notification thereof to the Executive Director of the Corporation.

CERTIFICATION

I certify that this document was adopted as a Rule of Procedure by the State Planning Council on September 12, 1985, in accordance with Section 42-11 -10(e)(4) of the General Laws.

RULE IV RULES OF PROCEDURE:

RHODE ISLAND INTERGOVERNMENTAL REVIEW PROCESS

The following are the rules of procedure for the Rhode Island Intergovernmental Review Process, established in accordance with Presidential Executive Order 12372 and pursuant to Governor's Executive Order Number 83-11. The state review system formulated pursuant to Executive Order 12372 became effective on October 1, 1983. These rules amend the original rules adopted by the State Planning Council on February 9, 1984, which became effective March 1, 1984. These amendments were adopted by the State Planning Council on September 10, 1987 and became effective on October 1, 1987.

Rule 1: Organization

1.01

Chapter 42-11 of the General Laws of 1956 entitled "Department of Administration" was amended by Chapter 126 of the Public Laws of 1970 and Chapter 228 of the Public Laws of 1978 to establish a statewide planning program within the Department of Administration in order to promote the proper development of the state's human, economic and physical resources, and thereby promote the health, safety and general welfare of its citizens by placing the state's comprehensive planning activities on a more permanent and continuing basis by creating an agency for comprehensive statewide planning within the executive branch.

1.02

Section 42-11 -10(f) of the General Laws of Rhode Island directs that the Division of Planning shall be the principal staff agency of the State Planning Council for coordinating strategic plans for the comprehensive development of the state's human, economic and physical resources.

1.03

A state planning council is established by Section 42-11-10(b) of the General Laws of Rhode Island to provide policy advice and guidance to state planning activities. It is the duty of the state planning council to:

- a. provide representation of a broad range of interests and viewpoints in the state planning process;
- b. assist the Division of Planning in coordinating the planning and development activities of all state, local and private bodies;
- c. review the proposed annual work program and budget request of the Division of Planning;

- d. adopt the goals and policies for the growth and development of the state, and the state guide plan, and to modify or amend any of these. All these shall be adopted in accordance with procedures set forth in the General Laws Chapter 42-35.

1.04

The single point of contact (SPOC) designated by the Governor's Executive Order number 83-11 to administer the state process for reviewing and commenting on proposed federal financial assistance and direct development activities is the Division of Planning, Office of Strategic Planning.

Rule 2: Definitions

2.01

The term "Council" whenever used in these regulations shall mean the State Planning Council.

2.02

The term "Secretary" whenever used in these regulations shall mean the Secretary of the Council designated by Section 42-11 -10(d) of the General Laws.

2.03

The term "Clearinghouse Coordinator" shall mean that member of the Division of Planning designated by the Associate Director thereof to conduct the administrative requirements of the Rhode Island Intergovernmental Review process.

2.04

The term "State Guide Plan" shall mean all statements of goals and policies and plans or plan elements in effect at the time a proposal is received, as adopted by the State Planning Council in accordance with Section 42-11-10(e)(1) of the General Laws of Rhode Island together with all statements of goals and policies and plans or plan elements adopted by its predecessor body, the Policy Committee of the Rhode Island Comprehensive Transportation and Land Use Planning Program, as established by Section 3 of the Inter-Agency agreement between the Rhode Island Development Council and Department of Public Works dated May 27, 1964, as amended on March 25, 1965 (Rhode Island Public Transit Authority) and on July 12, 1965 (Department of Business Regulation).

2.05

The term "federal activity(ies)" includes all of the following:

- a. Project(s): Applications for federal grants, loans or technical assistance identified in the most recent publication of the Catalogue of Federal Domestic Assistance (CFDA) as eligible for review under Executive Order 12372 except when the application is the direct result of the Governor's declaration of a state of emergency. Specific exceptions other than that noted above shall be identified by the SPOC coordinator and publicized no less than semi-annually.
- b. Direct Federal Activity(ies): Any and all federal activities subject to Executive Order 12372 review.
- c. State plan(s)-. Any and all state plans submitted by the state or its administrative subdivisions for the purpose of acquiring or maintaining eligibility for federal financial assistance or participation.

2.06

The term "Clearinghouse" whenever used in these regulations shall mean the Division of Planning, Office of Strategic Planning. It may be used interchangeably with the term "single point of contact" (SPOC).

2.07

The term "applicant" whenever used in these regulations shall mean any state, local or private agency or individual seeking federal financial or technical assistance under those programs identified as eligible.

2.08

The term "originator" whenever used in these regulations shall mean that agency and/or its designated contact person responsible for having submitted a notification of proposed federal activity to the Clearinghouse for review pursuant to these rules of procedure.

Rule 3: Clearinghouse Procedures

3.01

Minimum requirements for notification of proposed federal activity to the State Single Point of Contact are as follows:

- a. All applicants as defined in Rule 2.07 originating projects as defined in Rule 2.05(a) shall submit to the Clearinghouse coordinator a completed form prescribed by the Clearinghouse. When appropriate, a locus map that must be reproducible both in terms of quality and size (no larger than 81 x 14 inches) and a site plan should be attached to this form. A copy of the entire application, or pre-application, identical to that submitted to the federal funding source should accompany the submittal to the SPOC. An applicant must provide any additional information to the SPOC needed to facilitate the review and recommendation of the SPOC.
- b. Federal agencies, in their oral or written notice to the SPOC concerning a proposed direct federal action as defined in Rule 2.05(b), must identify the federal office proposing the activity, the nature of the activity, the federal contact person for additional information, the start date for the sixty (60) day comment period, and submit at least one (1) copy (preferably 10 copies) of the entire document describing the activity.
- c. An agency of the state government must notify the SPOC of any proposed state plan as defined in Rule 2.05(c) and submit a full copy with a summary for review as soon as possible in order that the SPOC may have up to sixty (60) days in which to conduct its review of the plan and submit its recommendations thereon prior to final adoption of the plan. The summary of the plan must be brief, typically one to three pages in length, and should specifically identify and explain each of the following:
 1. Major problems which the plan addresses;
 2. Objectives of the plan (indicating focus on problems);
 3. Resources required and available to reach objectives;
 4. Constraints precluding or complicating application of available resources; and
 5. Strategies for achieving objectives of the plan.

3.02

The SPOC shall acknowledge receipt of all materials received in the Division pursuant to these rules within two working days of receipt. Such notification shall include the state application identifier (SAI) and the anticipated review completion date. Notice to the applicant shall be made if the submission lacks sufficient information to adequately review and formulate recommendation concerning federal financial participation or action. The process shall also apply in cases of direct federal action and submission of state plans as referenced in these rules,

3.03

The SPOC coordinator shall notify state, local and other agencies and organizations which might be significantly affected by the proposed federal activity. If written comment is solicited from the above referenced agencies and groups a minimum of fifteen (15) days shall be afforded for comment. At a minimum, the SPOC shall notify or contact the following:

- a. Chief elected officials of local governments or their designees whose jurisdiction may be directly affected by the proposal;
- b. The Rhode Island Coastal Resources Management Council if the proposal is located in or significantly affects the coastal zone;
- c. Appropriate state and local agencies which are authorized to develop and enforce environmental standards in cases where the proposal may have a significant impact on the environment;
- d. Public agencies which have expressed an interest in the program area under review;
- e. Any individual who, or agency or group which, in the judgment of the Coordinator, may offer a significant contribution to the review process.

3.04

The SPOC shall utilize the following criteria in examining federal activities defined in Rule 2.05:

- a. is consistent with comprehensive state, area and local plans;
- b. duplicates or needs to be coordinated with other projects;
- c. might be revised to improve effectiveness,
- d. contributes to state area and local objectives and priorities in natural and human resources and economic and community development including land use,

conservation of natural resources, balanced transportation, recreation and open space, natural and historic preservation, community facilities and design standards;

e. affects energy resource supply and demand;

f. affects the environment:

g. requires displacement of people or business;

h. contributes to balanced development patterns and service delivery;

i. relates to coastal zone management in coastal areas; and conforms with a plan or an application of a general purpose government, where the applicant is a special purpose government.

3.05

Upon receipt of comments or the expiration of the comment period the Coordinator shall prepare a staff report. Should the staff recommend federal financial participation or no objection to a proposed federal action, such notification shall be forwarded directly to the applicant. Should the staff recommendation be negative, the applicant shall be notified and afforded an opportunity to meet with the Coordinator, appropriate divisional staff, the agencies and/or individuals forwarding substantive comment to the SPOC to discuss the recommendation. A final staff recommendation shall be prepared within ten (10) working days of the above meeting and forwarded to all appropriate parties.

3.06

The Clearinghouse review period shall consist of up to 60 days (up to 30 days in the case of non-competitive or continuation grants) from the time the application is received by the SPOC. Should the applicant be required to submit additional information to the SPOC, the time for review shall be expanded to allow for the submission of additional documentation. All applicants must notify the SPOC, in writing, of the appropriate federal agency and/or contact person to be notified of the SPOC recommendation. Failure to do so will result in unnecessary delay in the transmittal of the final recommendation and may jeopardize the applicant's receipt of federal funds.

3.07

The Coordinator shall identify new or additional federal activities that are eligible for review under these regulations and make recommendations to the Associate Director for exclusion if such an action is deemed to be appropriate. The presumption shall be that all programs eligible for Executive Order 12372 review shall be reviewed unless specifically excluded. Notice of such exclusion shall be made available no less than semi-annually.

3.08

Review of a state plan as defined in Rule 2.05(c) and recommendation of approval of the plan shall also constitute review and recommendation of approval of application for federal financial assistance to carry out activities described in the plan for a period of time not to exceed two years. The originator of an application under this section shall notify the coordinator, in writing, of each application under this section. This notification shall include:

- a. The federal program under which the application will be made, identified by CFDA number and title,
- b. The activity to be undertaken, and the place where this activity is provided for in the approved state plan, preferably by page and section number; and
- c. The amount of the grant applied for, and the amount and source(s) of any nonfederal funds to be used.

Notification may be accomplished by submission of the federal grant application cover sheet, with accompanying information that meets the above requirements.

3.09

The Coordinator shall insure that every final staff recommendation shall be forwarded to the applicant agency. Substantive comments shall also be forwarded to the appropriate federal agency. Copies of any other relevant materials may also be forwarded to other interested parties.

CERTIFICATION

I certify that this document was adopted as a Rule of Procedure by the State Planning Council on September 10, 1987, in accordance with Section 42-11 -10(e)(4) of the General Laws.

RULE V SOLID WASTE FACILITY SITING

The following are rules for solid waste facility siting, adopted pursuant to Chapters 23-18.9 and 23-19 and Section 42-11-10(e)(4) of the General Laws of Rhode Island.

Rule V-1: Authority, Purpose, And Scope

1.01

Section 42-11-10(e)(4) of the General Laws of Rhode Island gives the State Planning Council authority to adopt rules.

Section 23-18.9-9.1 of the General Laws of Rhode Island designates areas in which solid waste landfill facilities, incinerators, and resource recovery facilities are prohibited; and it authorizes the State Planning Council to designate other such areas.

Section 23-18.9-9 requires any proposed private solid waste disposal facility to obtain a certificate of approval from the State Planning Council. The Council shall only approve a site after evaluation of alternative sites and assessment of comparative environmental impact. The Council is directed to promulgate rules "for the evaluation and/or assessment, and distribution of location of sites for waste facilities among the regions of this state."

Section 23-19-10.2 requires solid waste disposal sites selected by the Solid Waste Management Corporation to be submitted to the Council for the same evaluation and/or assessment, in accordance with Council rules, and for certification that the site conforms with the State Guide Plan.

1.02

The purpose of this rule is to further the legislative intent of the statutes cited above; namely, to meet the state's solid waste disposal needs (after maximizing the use of source reduction, reuse, and recycling) as part of a well planned, integrated statewide system for the effective management of solid waste, in a manner that is consistent with state health and environmental regulations and that protects underground drinking water sources.

Specifically, the purposes of Rule V are to define the terms used in administering the applicable statutes and this rule; to designate additional areas where solid waste landfills, incinerators, and resource recovery facilities are prohibited; and to establish the procedure for evaluation and assessment of solid waste disposal facility sites.

1.03

The scope of Rule V is creation of a review process for siting solid waste facilities within the state. The process will incorporate the following steps:

- 1 . Determination as to whether the site is in a ',prohibited area." These areas are specified by law in Section 23-18.9-9.1(c), and others are designated in this rule by the State Planning Council.
2. Evaluation of alternative sites and assessment of their comparative environmental impact. The alternative sites and the descriptive material necessary for their evaluation must be submitted by the applicant. The assessment will be carried out under this rule by the State Planning Council.
3. Evaluation of sites by the Council in terms of the requirement that "distribution of location of sites for waste facilities among the regions of this state" be achieved.
4. In the case of facilities operated by the Solid Waste Management Corporation, certification by the Council that the site conforms with the State Guide Plan.
5. Issuance by the Council of a certificate of approval, which must accompany the application for a license submitted to the Department of Environmental Management.

Rule V-2-. Definitions

For purposes of this Rule, terms are defined as follows.

2.01

The term "Coast" means the mean high water line for tidal waters.

2.02

The term "Coastal barrier" means a narrow strip of land made of unconsolidated material, usually extending parallel to the coast, and separated from the mainland by a coastal pond, tidal water body, or coastal wetland, as designated under the Coastal Barrier Resources Act of 1982 (Public Law 97-348), or as designated by the State Planning Council in accordance with the criteria set forth in that Act.

2.03

The term "Coastal high hazard area" means the area subject to high velocity waters during flood, including, but not limited to, hurricane wave wash or tsunamis, and designated on Flood Insurance Rate Maps (FIRM) as V 1 to V 30 or VE.

2.04

The term "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, abandoning or placing of any solid waste in, on, into or onto any land, other surface, or building, or into any water, stormwater system, or sewer system.

2.05

The term "Endangered or threatened species" means any species listed as such pursuant to Section 4 of the Federal Endangered Species Act.

2.06

The term "Fault" means a fracture along which rock on one side has been displaced with respect to that on the other side.

2.07

The term "Groundwater" means water found underground that completely fills the open spaces between particles of sand, gravel, clay, silt, and consolidated rock fractures.

2.08

The term "Groundwater aquifer" means a geological formation, group of formations, or part of a formation consisting of a groundwater reservoir and its recharge area.

2.09

The term "Groundwater classified GAA" means the Department of Environmental Management (DEM)-delineated critical portion of the recharge areas to groundwater reservoirs (including all lands above the groundwater reservoir), a circle with a 2,000-foot radius around each community water supply well (or within a more accurate delineation of a wellhead protection area that has been accepted by DEM), and Block Island (because of the unavailability of alternative drinking water supply sources).

2.10

The term "Groundwater recharge area" means the land surface from which water is added to the zone of saturation. The recharge area for a particular well or aquifer, for instance, is that land surface from which water moves to the well or aquifer, or may move to the well or aquifer under certain hydrologic conditions.

2.11

The term "Groundwater reservoir" means that part of a groundwater aquifer with transmissivity equal to or greater than 4,000 feet squared per day and a saturated thickness equal to or greater than 40 feet.

2.12

The term "Incinerator" means any enclosed device using controlled flame combustion to treat, destroy, or reduce waste through burning, which has a capacity of at least one thousand pounds per hour. Neither boilers nor industrial furnaces shall be classified as incinerators.

2.13

The term "Landfill" means a disposal facility or part of a facility where solid waste is placed in or on land. For the purposes of this Rule, this term shall be synonymous with "sanitary landfill, " a land disposal site employing an engineered method of disposal of solid waste in a manner that minimizes environmental hazards, including spreading the solid waste in thin layers, compacting the solid waste to the smallest practical volume, and applying cover material at the end of each operating day or at such more frequent intervals as may be necessary.

2.14

The term "Lineament" means a mappable linear feature of the surface terrain, >0.5 km in length, which differs from adjacent geologic features and may be taken to reflect structural weaknesses in the underlying rock (bedrock), such as fractures or faults.

2.15

The term "One hundred year floodplain" means any land area that is subject to a one-percent or greater chance of flooding in any given year from any source and is designated on Flood Insurance Rate Maps (FIRM) as an A zone.

2.16

The term "Resource recovery" means the processing of solid waste in such a way as to produce materials or energy that may be used in manufacturing, agriculture, or other processes.

2.17

The term "Resource recovery facility" means a place, with or without structures, used or to be used for resource recovery. For the purposes of this Rule, resource recovery facilities shall be limited to those in which solid waste is burned to produce energy, heat, or steam through a combustion process such as mass burn or resource-derived fuel. Resource recovery facilities involving only storage, sorting, composting, transfer, or other processing functions are not covered by this Rule.

2.18

The term "Solid waste" means any garbage, refuse, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, septic or sewage sludge, nor does it include hazardous waste, as defined in the Rhode Island Hazardous Waste Management Act, Chapter 23-19.1, or Rules 3.25 or 3.53 of the Rules and Regulations for Hazardous Waste Generation, Transportation, Treatment, Storage, and Disposal of the Division of Air and Hazardous Materials of the Rhode Island Department of Environmental Management. For the purposes of this Rule, this term also excludes solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under 33 U.S.C. 1342, dredge spoils, infectious waste, and radioactive waste.

2.19

The term "Transmissivity" means a measure of the ability of an aquifer to transmit a fluid, reported in units of feet squared per day.

2.20

The term "'208' Areawide Water Quality Management Plan" means the statewide plan for maintaining or improving surface water and groundwater quality financed by and undertaken pursuant to Section 208 of the Federal Water Pollution Control Act (later amended as the Clean Water Act of 1987). Rhode Island's "208" plan was a cooperative effort of the Rhode Island Department of Administration's Statewide Planning Program, the Department of Environmental Management, the Water Resources Board, local governments, and private consultants. The plan was published in 1979, certified by the Governor on March 3, 1980, and approved by the United States Environmental Protection Agency on May 2, 1980.

2.21

The term "Washout" means the movement of solid waste from the active portion of the facility as a result of flooding.

2.22

The term "Watershed" means the area drained by a river or stream.

2.23

The term "*Wellhead protection area*" means that portion of the ground surface and subsurface surrounding a public well or wellfield through which water will move toward and reach such well or wellfield. For purposes of this Rule, only public wells defined as community wells or as non-community non-transient wells by the Rhode Island Department of Health are included.

2.24

The term "Zone of saturation" means the subsurface zone in which all open spaces are filled with water.

Rule V-3: Sites Prohibited By Statute

3.01

Solid waste landfill facilities are prohibited in the following areas by Section 23-18.9- 9. 1 (b) of the General Laws.-

- (1) Watersheds of existing surface drinking water supplies;
- (2) Watersheds of the proposed Big River Reservoir;
- (3) Groundwater recharge areas as such are mapped on the "208" Areawide Water Quality Management Plan but only until the time as the areas are designated by the Director of Environmental Management as GAA pursuant to Chapter 46-13.1 of the General Laws;
- (4) One hundred (100) year flood plains;
- (5) Areas within 200 feet of the coast, and/or coastal high hazard areas;
- (6) Areas designated by the National Oceanic and Atmospheric Administration of the United States Department of Commerce as a National Estuarine Sanctuary;
- (7) Coastal barriers;
- (8) Wellhead protection areas as designated by the Director of Environmental Management.

3.02

Any solid waste landfill site must include the acquisition and maintenance of a heavily vegetated buffer zone of at least 600 feet between any working face or excavated area and adjacent property, as required by Section 23-18.9-9.1(b) of the General Laws.

The buffer zone shall be measured from the perimeter of the area licensed for placement of solid waste and from the perimeter of any area being excavated, at a minimum.

3.03

The outer limit of any solid waste landfill site must be located at least 1,200 feet from the center line of the following fresh water rivers, as required by Section 23-18.9-9.1(b) of the General Laws:

Ashaway River, Beaver River, Blackstone River, Chepachet River, Clear River, Falls River, Flat River, Hunt River, Moshassuck River, Moosup River, Narrow River, Pawcatuck River, Pascoag River, Pawtuxet River, and Wood River.

The Flat River located in Coventry, not the Flat River in West Greenwich and Exeter, shall be the one included.

3.04

Incinerators and resource recovery facilities are prohibited in the following areas by Section 23-18.9-9.1 (c) of the General Laws:

- (1) Coastal high hazard areas;
- (2) Wellhead protection areas as designated by the Director of Environmental Management;
- (3) Areas designated by the National Oceanic and Atmospheric Administration of the United States Department of Commerce as a National Estuarine Sanctuary;
- (4) Coastal barriers.

3.05

Any amendment of Section 23-18.9-9.1 (b) or (c) of the General Laws will also amend the appropriate provisions of Rule V-3 without further action by the State Planning Council.

Rule V-4: Exclusionary Criteria Designated By The State Planning Council

4.01

Solid waste landfills, incinerators, and resource recovery facilities are excluded from the following areas, unless statutorily mandated, under authority of Section 23-18.9-9.1(d) of the General Laws:

- (1) Habitat of endangered or threatened species;
- (2) Lands dedicated to agricultural use through the acquisition of fee or development rights by any agency of state or local government.

4.02

Solid waste landfills are excluded from the following areas, unless statutorily mandated, under authority of Section 23-18.9-9.1 (d) of the General Laws:

- (1) Areas where the underlying rock is likely to have structural weakness, such as fractures or faults, because of the occurrence of a very high frequency of lineaments in the area. For the purposes of this Rule, an 80-km square unit area exhibiting a very high frequency of lineaments shall have a total length of lineaments in kilometers greater than or equal to 40. The lineament density map of Frohlich & Fisher (1985), based on satellite remote sensing data analyzed for the Rhode Island Water Resources Center, shall be used as the indicator of this condition;
- (2) Areas within 10,000 feet of any part of an active state airport runway used by jet or turbojet aircraft; and areas within 5,000 feet of any part of an active state airport runway used only by piston type aircraft.
- (3) Areas within 1,200 feet of the center line of the following fresh water streams: Abbott Run Brook, Branch River, Potowomut River, Saugatucket River, Scrabbletown Brook, Ten Mile River, Usquepaug River, and Woonasquatucket River.

4.03

Solid waste incinerators and resource recovery facilities are excluded from the following areas, unless statutorily mandated, under authority of Section 23-18.9-9.1(d) of the General Laws:

Management areas, wildlife refuges, parks, and recreation or conservation areas owned by any level or agency of government.

Rule V-5: Evaluation Of Alternative Sites [Reserved]

Rule V-6: Certification Of Proposed Sites

6.01

Section 23-18.9-9(a) of the General Laws requires that applications to construct and/or operate a solid waste management facility be accompanied by a certificate of approval of the site by the State Planning Council.

Certification of a site by the State Planning Council may occur only upon demonstration of all of the following:

- (1) Conformance with the State Guide Plan, in the case of public solid waste disposal facilities operated by the Solid Waste Management Corporation;
- (2) Compliance with criteria for solid waste facility siting;
- (3) Evaluation of alternative sites for solid waste facilities, taking into consideration comparative environmental impact and regional distribution of sites;
- (4) Issuance of a public notice and expiration of the public comment period regarding the application for the facility.

6.02

Certificates of approval shall not be issued for:

- (1) Statutorily mandated sites;
- (2) Sites for solid waste management facilities other than solid waste landfills, incinerators, and/or resource recovery facilities.

6.03

Nothing in this Rule shall be construed to supersede the powers and duties of the Director of the Rhode Island Department of Environmental Management, or any requirements for permit issuance, recordkeeping, or any other provision or responsibility imposed on solid waste generators, managers, or other persons, by any law or regulation of the State of Rhode Island.

CERTIFICATION

I certify that this document was adopted as a Rule of Procedure by the State Planning Council on April 12, 1990, in accordance with Section 42-11-10(e)(4) of the General Laws.

RULE VI INSPECTION AND COPYING OF GRAPHIC MATERIALS

The Division of Planning owns or has control of a large number of maps, aerial photographs, and other graphic materials. The following are the rules for inspecting and copying these.

Rule VI -1: Authority, Purpose And Scope

1.01 Authority

Section 42-11 –10(e)(4) of the General Laws of Rhode Island gives the State Planning Council authority to adopt rules concerning matters within its jurisdiction.

Chapter 38-2 of the General Laws of Rhode Island recognizes the public's right of access "to records pertaining to the policy-making responsibilities of government." Records that "are relevant to the public health, safety, and welfare" are included.

Section 38-2-3 establishes the "right to inspect and/or copy such records at such reasonable time as may be determined by the custodian" and directs each public body to establish procedures for access to records. The cost limitations set in Section 38-2-4 do not apply to the graphic materials that are the subject of this rule, however, since they are not copyable on common business or legal size paper.

1.02 Purpose

This rule establishes priorities of use of graphic materials, designates the custodian of such materials, and sets the procedures for inspecting and copying them.

The State Planning Council notes that the graphic materials covered by the rule differ significantly in size, substance, durability, content, and other aspects from those records that are contemplated by Chapter 38-2 of the General Laws. The Council nevertheless desires to make these available for inspection and copying in a manner consistent with the intent of the chapter and with the requirements that such graphic materials be safeguarded and available for use by the Division of Planning.

1.03 Scope

This rule governs inspection and copying of maps, charts, aerial photographs, and other materials that are maintained by the Graphics Section of the Division of Planning. They may be transparent or opaque. They may have been prepared by the Division of Planning or by others.

Graphic materials covered by the rule include those prepared or purchased by the Division of Planning with state appropriations and/or federal grants and those prepared or purchased by other public or private parties but placed in the Division's control. The original or subsequent preparer or purchaser may retain some ownership or regulatory interest in these materials, which are not superseded by this rule. Materials excluded from public inspection and, or copying by Section 38-2-2(d) are not covered by this rule.

Rule VI-2: Custodian

The Supervising Draftperson in the Division of Planning is designated the Custodian of graphic materials covered by this rule. In the event that the Custodian is absent for a period of more than three consecutive work days, the Secretary shall designate an alternate custodian.

Rule VI-3: Priority Of Use

Graphic materials owned or in the custody of the Division of Planning are primarily for use in the state planning and municipal affairs activities of that Division. Therefore the priorities for inspection and copying of such materials are as follows:

- 1) Division of Planning of the Department of Administration
- 2) Other agencies of the Department of Administration.
- 3) Other agencies of state government.
- 4) Agencies of local or federal government or public regional agencies.
- 5) Private individuals, organizations, and firms.

Rule VI-4: Procedures For Inspection And Copying By Governmental Agencies

4.01 Availability

The Custodian or designated alternate custodian will make graphic materials available for inspection and/or copying to employees or authorized representatives of any governmental agency upon presentation of adequate identification.

4.02 Copying

Graphic materials may be loaned to such governmental employees or authorized representatives for copying through reproduction by photographic or transfer processes at its own facilities or by a vendor. The borrower shall assume full responsibility for return of all materials in an undamaged condition, within three working days, by executing a "Loan Request", form DOP-022, attached to this Rule.

4.03 Replacement

The borrower shall replace any materials, or shall pay to the Division of Planning the actual cost of replacement, that are damaged or destroyed while their safety and condition are the responsibility of the borrower, regardless of actual control or possession of the materials.

4.04 Suspension of Copying Privileges

Failure by a governmental agency to return loaned graphic materials within the time specified herein shall result in suspension of the privilege of borrowing (but not of inspecting) such materials for a period of sixty days. Failure by a governmental agency to replace or pay for any materials that are damaged or destroyed shall result in permanent suspension of RULE VI-4 as it applies to that agency.

Rule VI-5: Procedures For Inspection And Copying By Others

5.01 Availability

The Custodian or designated alternate custodian will make graphic materials available for inspection during the hours of 9:00 a.m. to 11:30 a.m. and 1:00 p.m. to 4:00 p.m. on regular business days or, if necessary, at other times by appointment within regular business hours.

5.02 Copying

Graphic materials may be copied by others using the following procedure:

- a) The borrower will make satisfactory arrangements with a vendor covering the cost of pickup, reproductions and return of the original materials to the custodian. Such arrangements shall insure that there is no charge to the State or any agency thereof.
- b) The borrower will notify the Custodian or designated alternate custodian of the graphic materials requested to be copied. Notification will be by document number or name and date as necessary to insure accurate identification.
- c) The borrower will notify his/her vendor and, direct the vendor to pick up and reproduce the materials as requested and to return the original documents to the custodian. The borrower will make arrangements to obtain the copies from the vendor.

5.03 Qualification Of Vendors

The Division of Planning reserves the right to refuse to loan graphic materials to any vendor who is disqualified from bidding on the same kind of work by the Office of Purchases of the Rhode Island Department of Administration, who fails to return materials in a satisfactory condition, or who fails to replace any damaged materials.

5.04 Suspension Of Copying Privileges

Failure by a borrower to make arrangement for copying graphic materials that insure that no charge is made to the State or any agency thereof shall result in suspension of the privilege of borrowing (but not of inspecting) such materials for a period of sixty days on the first such occurrence, and permanently on the second occurrence.

Rule VI-6: Federal Prohibition Of Inspecting And/Or Copying Graphic Materials

Upon notification by the United States government that inspection or copying of any graphic materials is restricted or prohibited, any provisions of this Rule that conflict will be suspended and the Secretary shall put such procedures into effect as are necessary to comply with federal regulations.

CERTIFICATION

I certify that this document was adopted as a Rule of Procedure by the State Planning Council on April 11, 1991, in accordance with Section 42-11-10(e)(4) of the General Laws.

RULE VII

PRESERVATION OF FEDERALLY INSURED OR ASSISTED HOUSING

ADOPTED PURSUANT TO CHAPTER 34-45 GENERAL LAWS OF RHODE ISLAND

Rule VII-1: Purpose And Authority

1.01

Chapter 34-45 of the General Laws of Rhode Island, "The Affordable Housing Preservation Act of 1988," establishes that Rhode Island has a serious shortage of decent, safe, and sanitary rental housing units available at rents affordable to low and moderate income families. Many low and moderate income families are unable to meet the higher cost of rent and either live in unsafe, substandard units commit an unreasonably high percentage of their income to rent or find themselves without housing. This inadequacy in the supply of decent and affordable rental housing endangers the public health and jeopardizes the public safety, general welfare, and good of the entire state.

This act requires owners of federally subsidized development to give at least two years notice of any sale, lease, or other disposition that would result in discontinuance of subsidy. The act also gives a right of first refusal to purchase the housing to tenants' associations, the Rhode Island Housing and Mortgage Finance Corporation, the housing authority of the city or town in which the development is located, and the city or town government, in that order. This procedure is intended to preserve current federally insured and assisted housing and to avoid the involuntary displacement of tenants residing in such housing.

1.02

In order to carry out these purposes, authority to adopt regulations under the Act is given to the Rhode Island Department of Administration. Section 34-45-9 requires the Department to:

... issue such rules and regulation as may be necessary to effectuate the purposes of this act. Said rules and regulations shall include...

- (i) Specific procedural safeguards to assure that every person and entity upon whom a right of first refusal is conferred ... is afforded a fair and reasonable opportunity to exercise such right; and
- (ii) Such provisions as may be necessary or appropriate to assure that a person upon whom a right of first refusal is conferred ... shall be permitted

(a) not less than sixty (60) days from receipt of any bona fide offer ... to accept said offer, and

(b) not less than one hundred twenty (120) days from ... acceptance of said offer within which to secure ... financing.

Rule VII-2: definitions

Wherever used in these rules, the following terms shall be construed as follows:

2.01

"Appurtenant land" means only the land and related facilities that are currently dedicated to the federally insured or assisted rental units, and does not include land that may be dedicated to nonfederally insured or assisted units under common ownership, whether or not such land is adjacent to federally insured or assisted rental units.

2.02

"Corporation" means the Rhode Island Housing and Mortgage Finance Corporation-a corporation, instrumentality and agency of the state of Rhode Island established pursuant to the Rhode Island Housing and Mortgage Finance Corporation Act, Chapter 42-55 of the General Laws.

2.03

"Department" means the Rhode Island Department of Administration, acting through the Division of Planning and the State Planning Council.

2.04

"Development" means any structure or group of structures situated in the state of Rhode Island that is federally insured or assisted; provided, however, that the term "development" does not include any structure or group of structures that is not federally insured or assisted, although such structures may be commonly owned with units that receive such federal insurance or assistance.

2.05

"Federally insured or assisted" means any:

- (i) low-income housing units insured or assisted under Section 221(d)(3) or Section 236 of the National Housing Act, as amended,
- (ii) low-income housing units produced with assistance under Section 8 of the United States Housing Act of 1937, or as amended,
- (iii) rural low-income housing financed under Section 515 of the Housing Act of 1949, as amended, or
- (iv) rental or cooperative housing for elderly or handicapped persons financed with long-term direct loans to eligible private non-profit sponsors under Section 202 of the National Housing Act of 1959, as amended. Participation in the Section 8 lower Income Rental Assistance Program is required for 20 percent of Section 202 units.

2.06

"Mortgage" means the mortgage or deed of trust insured or held by the Commissioner of the Department of Housing and Urban Development on units insured and/or assisted under:

- (i) Section 221(d)(3) or Section 236 of the National Housing Act, as amended,
- (ii) low-income housing units produced with assistance under Section 8 of the United States Housing Act of 1937, as amended,
- (iii) rural low-income housing financed under Section 515 of the Housing Act of 1949, as amended or
- (iv) rental or cooperative housing for elderly or handicapped persons financed under Section 202 of the National Housing Act of 1959, as amended.

2.07

"Notice of intent" means an owner's notification of intent to seek prepayment of its mortgage or amendment of the mortgage or regulatory agreement pursuant to this rule or notification of intent to not renew Section 8 contracts.

2.08

"Owner" means an individual, corporation, association, partnership, joint venture, or business entity that holds title to a development or the mortgagor or trustor under the mortgage.

2.09

"Rental unit" or "unit" means that part of a development which is rented or offered for rent for residential occupancy and includes an apartment, efficiency apartment, room, or suite of rooms, and any other appurtenant land to such rental unit(s).

2.10

"Tenant" means a tenant, subtenant, lessee, sublessee, or other person currently in possession of, occupying, or receiving the benefits of a federally insured or assisted rental unit within a development.

2.11

"Tenant association" means an association or other organization that represents at least a majority of the tenants in federally insured or assisted rental units in a development, excluding those tenants who have not resided in the development for at least 90 days and those tenants who have been an employee of the owner during the preceding 120 days.

2.12

"Use restrictions" means any federal, state, or local statute, regulation, or ordinance or contract that as a condition of receipt of any housing assistance, including a rental subsidy, mortgage subsidy, or mortgage insurance, to a development:

- (i) establishes maximum limitations on tenant income as a condition of eligibility for occupancy of the units within a development; or
- (ii) imposes any restrictions on the maximum rents that could be charged for any of the units within a development; or
- (iii) requires that rental rates and/or changes in rental rates be reviewed by any governmental body or agency before such rents be implemented.

Rule VII-3: Notice Of Discontinuance

3.01

Not less than 2 years prior to:

- (i) selling, leasing, prepaying the mortgage, or otherwise disposing of a federally insured or assisted development in a manner that would either (a) result in a discontinuance of the use of the development as a federally insured or assisted housing development or (b) cause the termination or expiration of any use restrictions that apply to the federally insured or assisted housing development, or
- (ii) recording a declaration of condominium, pursuant to Chapter 34-36 or Chapter 34-36.1 of the General Laws, with respect to all or any portion of a federally insured or assisted development, the owner shall provide written notice of such sale, lease or other disposition to:
 - (a) each tenant of the development;
 - (b) the tenant association of the development, if such tenant association has been duly organized;
 - (c) the Corporation,
 - (d) the Department,
 - (e) the housing authority of the city or town in which the development is located; and
 - (f) the city or town council of the city or town in which the development is located.

3.02

For the purposes of this provision, "termination" or "expiration" of a use restriction does not include the termination or expiration of an agreement or contract imposing such use restrictions if such agreement or contract is immediately succeeded, without lapse, by an agreement or contract imposing use restrictions that embodies terms and conditions that are no less favorable to tenants and substantially equivalent to the prior agreement or contract.

3.03

The declaration of condominium of a federally insured or assisted development that is otherwise valid will not be invalid if consummated within 2 years of notice, provided that the owner records an agreement to maintain existing use restrictions for those units that are federally insured or assisted throughout the duration of the 2-year notice period.

3.04

A copy of the required notice shall be filed in the land evidence records of the city or town in which the development is located. When a declaration of condominium is recorded, an agreement to maintain existing use restrictions for those units which are federally insured or assisted for the duration of the 2-year notice period shall be filed in the appropriate office of land records and provided to the corporation.

Rule VII-4: opportunity To Purchase 4.01

No owner shall:

- (i) sell, lease, prepay the mortgage, or otherwise dispose of a federally insured or assisted development in a manner that would either (a) result, in a discontinuance of the use of the development as a federally insured or assisted housing development, or (b) cause the termination of any use restrictions that apply to the development, or
 - (ii) record a declaration of condominium, pursuant to Chapter 34-36 or chapter 34-36.1 of the General Laws, with respect to all or any portion of a federally insured or assisted development, unless he or she shall have first provided each of the following entities an opportunity to purchase the development:
 - (a) the tenant association of the development, first priority;
 - (b) the Corporation, second priority;
 - (c) the housing authority of the city or town in which the development is located, third priority; and
 - (d) the municipal government of the city and town in which the development is located, fourth priority.

A copy of the required offer shall be provided to the Department.

4.02

If a duly organized tenant association does not exist at the time of the offer required herein, the owner may discharge the requirement by providing notice of the opportunity to purchase to each tenant. A tenant organization duly elected and constituted subsequent to this notification procedure shall have the opportunity to purchase the development.

4.03

For the purposes of this provision, "termination of a use restriction" does not include the termination of an agreement or contract imposing such use restriction if such agreement or contract is immediately succeeded, without lapse, by an agreement or contract that is no less favorable to tenants and substantially equivalent to the prior agreement or contract.

Rule VII-5: Offer To Sell, Offer To Purchase, And Rights Of First Refusal

5.01

At the time an owner of existing federally insured or assisted development or an owner of a development that was federally insured or assisted within the preceding two years:

- (i) offers to sell, lease, prepay the mortgage, or otherwise dispose of a development to any person or entity other than those persons or entities listed in Rule 4.01 in a manner that would either
 - (a) result in discontinuance of the use of the development as a federally insured or assisted housing development, or
 - (b) cause the termination of any use restrictions that apply to the development or
- (ii) records a declaration of condominium, pursuant to Chapter 34-36 or Chapter 34-36.1 of the General Laws, with respect to all or any portion of a federally insured or assisted development, he or she shall first provide to each person and entity listed in Rule 4.01 a written copy of the offer to sell, by registered or certified mail, return receipt requested, and post a copy of the offer of sale in a conspicuous place in common areas of the development.

5.02

For the purposes of this Rule, an offer must be made in writing and be notarized and must contain:

- to:
- (i) the essential terms of the sale, which shall include, but need not be limited to:
 - (a) the sale price,
 - (b) the terms of seller financing, if any, including the amount, the interest rate, and the amortization rate thereof,
 - (c) the terms of assumable financing, if any, including the amount, the interest rate, and the amortization rate thereof; and
 - (d) proposed improvements to the property to be made by the owner in connection with the sale, or other economic concessions by the owner in connection with the sale, if any;
 - (ii) a statement that each of the persons and entities listed in Rule 4.01 has the right to purchase the development in the order of priority established by that rule,
 - (iii) a summary of tenants' rights, notification procedures, and sources of technical assistance as contained in the Department's form described in Rule 7.02 (iii);
 - (iv) a statement that the owner will make available to each of the entities listed in Rule 4.01, within 7 days of a request:
 - (a) a floor plan of the development,
 - (b) an itemized list of monthly operating expenses,
 - (c) utility consumption rates,
 - (d) capital expenditures within each of the 2 preceding calendar years,
 - (e) the most recent rent roll,
 - (f) a list of tenants and vacant units,
 - (g) a statement of the vacancy rate at the development for each of the 2 preceding calendar years.
 - (h) programmed and/or planned capital improvements or replacements scheduled for the next twelve months, if any, and,
 - (i) financial statements for each of the two preceding calendar years.

5.03

If a person or entity other than those listed in Rule 4.01 offers to purchase, lease or otherwise acquire a federally insured or assisted development on terms materially different from those offered pursuant to Rule 5.02 and in a manner that would either:

- (i) result in a discontinuance of the use of the development as a federally insured or assisted housing development, or
- (ii) cause the termination of any use restrictions that apply to the development,

The owner of said development shall, before accepting said third-party offer, provide to each entity listed in Rule 4.01 and to the Department, by registered mail, return receipt requested:

- (a) written notice of the pendency and essential terms of said offer, including all of the information required in Rule 5.02; and
- (b) a bona fide offer to sell the development to those entities listed in Rule 4.01 upon the same terms and conditions of said third-party offer.

Entities listed at Rule 4.01 shall exercise their rights pursuant to Rule 5.03 in accordance with Rule 6.02.

5.04

The right of first refusal described in Rule 5.03 shall not be deemed to allow any of the entities listed in Rule 4.01 to vary the terms of any offer made to an owner or to make a counteroffer to the owner.

5.05

The rights of first refusal are conferred in the order stated in Rule 4.01.

5.06

No right of first refusal shall apply to:

- (i) a government taking by eminent domain or negotiated purchase;
- (ii) a forced sale pursuant to a foreclosure;
- (iii) a transfer by gift, devise or operation of law; or
- (iv) a sale to a person who would be included within the table of descent and distribution if there were to be a death in the estate of an owner.

5.07

Entities to whom notice is required to be given may waive their rights pursuant to a written waiver signed by a duly authorized representative. Said waiver shall terminate all rights under this rule.

Waivers of rights obtained as a condition of tenancy do not constitute termination of rights under this rule

Rule VII-6: Acquisition Procedures

6.01

The entities to whom an opportunity of first refusal is conferred are permitted:

- (i) not less than 60 days from receipt of any bona fide offer to accept said offer, and
- (ii) not less than 120 days from acceptance of said offer within which to secure financing.

6.02

Notification of the exercise of first refusal rights is to be provided to the owner, the Department, and the entities listed in 4.01 (ii) by registered or certified mail, return receipt requested. A copy of the offer to purchase is to be posted in a conspicuous place in common areas of the development.

6.03

If the notification of the exercise of first refusal rights is within the 60-day time period allowed for that purpose, the Department will so notify the owner and the offerer and the 120-day time period allowed for securing financing shall commence.

6.04

If more than one eligible entity exercises first refusal rights, the priorities set forth in Rule 4.01 shall determine which entity will be entitled to purchase the federally insured or assisted development, provided such notifications are within the 60 days provided for accepting first refusal rights.

6.05

If the eligible entities named in Rule 4.01 all certify unwillingness to accept first refusal rights, or should they allow the 60-day period to expire, they shall no longer have an opportunity to acquire the federally insured or assisted development under Chapter 34- 45 of the General Laws. Certification is to be provided by registered or certified mail, return receipt requested, to the owner and the Department.

6.06

If financing is not consummated pursuant to Rule 6.01(b), then the owner may sell, lease, or otherwise dispose of the federally assisted or insured development without further requirement to notify or offer to entities referenced in Rule 4.01, provided there is no change in the terms of sale as described in Rule 5.02.

Rule VII-7: Notices And Recordkeeping

7.01

Notice(s) required herein shall be deemed effective upon dispatch at a United States

Post Office by certified or registered mail, return receipt requested. Notice to a tenant association may be made by certified mail, return receipt requested, to the President of the association at his or her last address on file with the owner.

7.02

The Department shall maintain such records and information as necessary to effectuate the purposes of this act. Such records and information shall include but need not be limited to:

- (i) a date-stamped file of offers to purchase, lease or otherwise acquire federally insured or assisted developments;
- (ii) up-to-date lists of employees, officers or other officials of the entities listed in Rule 4.01 who are designated to receive notification pursuant to this act; and
- (iii) notice of discontinuance requirements as described in the department's form: "Summary of Tenants' Rights and Sources of Technical Assistance under the Affordable Housing Preservation Act of 1988 (August, 1988, or most recent revision). Forms are available upon request from the

7.03

The Department shall utilize, for the purposes of adopting or amending rules made pursuant to Section 34-45-9 and/or resolving disputes and appeals or interpreting provisions of Section 34-45-9, the State Planning Council, as established in Section 42-11 - 10(d) of the General Laws.

7.04

The Department shall maintain records of all rules, actions, recommendations, interpretations, and amendments thereto in accordance with provisions of Rule 7.03. Records shall be open to the public in accordance with provisions of the Rhode Island open records law.

7.05

The Department shall maintain such records and files as are deemed necessary to assure that time periods specified in the act for exercising a right of first refusal and obtaining financing are maintained.

7.06

The Department shall date-stamp and log all official notifications received pursuant to this act and notify entities with standing under this act of effective dates.

Rule VII-8: Applicability

8.01

This rule does not apply to developments whose owner(s) gave notice to the United States Department of Housing and Urban Development pursuant to Section 262 of the Housing and Community Development Act of 1987 [Section 8(c) of the United States Housing Act of 1987 as amended] of termination of the Housing Assistance payment contract for the development prior to the enactment of the "Affordable Housing Preservation Act of 1988" (RIGL 34-45).

CERTIFICATION

I certify that this document was adopted as a Rule of Procedure by the State Planning Council on April 13, 1989, and that it was amended on November 9, 1989, in accordance with Section 42-11 -10(e)(4) of the General Laws.

STATE OF RHODE ISLAND STATE PLANNING COUNCIL

PROCEDURES TO DETERMINE THE CONFORMITY OF TRANSPORTATION PLANS, PROGRAMS AND PROJECTS TO THE STATE IMPLEMENTATION PLAN FOR AIR QUALITY

RULE VIII-1: Introduction

These procedures are established by the Department of Environmental Management (DEM), the Department of Transportation (DOT) and the single statewide Metropolitan Planning Organization (MPO), consisting of the State Planning Council and its staff in the Department of Administration, Division of Planning (DOP) regarding the determination of conformity of transportation plans, programs and projects to the State Implementation plan (SIP). These procedures are required by Section 176(c) of the federal Clean Air Act, as amended and will become part of the SIP.

RULE VIII-2: Applicability

These procedures apply to any transportation plan, program or project developed pursuant to Title 23 United States Code and the Federal Transit Act and to the actions of the DOT and the MPO regarding the determination of conformity of transportation plans, programs and projects to the SIP.

RULE VIII-3. Standard

3.01

The purpose of the determination of conformity is to assure that transportation plans, programs and projects, to the greatest extent possible, eliminate or -reduce the severity and number of violations of - the national ambient air quality standards and facilitate achieving and maintaining such standards'

3.02

A determination of conformity will be made by the MPO only if the subject transportation plan, program or project will not:

- (a) cause or contribute to any new violation of any national ambient air quality standard;
- (b) increase the frequency or severity of any existing violation of any standard;
- (c) delay timely attainment of any standard or any required interim or final emission reductions milestone or. other milestone; or
- (d) interfere with the maintenance or continued attainment of any standard.

RULE VIII-4: Criteria for Conformity

Any transportation plan or transportation improvement program adopted by the MPO must implement the applicable transportation provisions of the state implementation plan.

4.02

The MPO shall only adopt transportation plans or transportation improvement programs or find plans or programs to be in conformity with the state implementation plan after a final determination has been made that emissions expected from implementation of such plans or programs are consistent with estimates of emissions from motor vehicles and necessary emissions reductions contained in the state implementation plan and that the plans or programs will meet the standards of Section 3.2 of these procedures.

4.03

The MPO shall only adopt or approve a transportation program of projects, after it determines that such program provides for timely implementation of transportation control measures consistent with schedules which may be included in the state implementation plan.

4.04

A transportation project may be adopted or approved by the MPO and implemented by the DOT only when it meets the standards of Section 3.2 of these procedures, meets the following-requirements:

- (a) such a project comes from a conforming plan and program; and,
- (b) the design concept and scope of such project have not changed significantly since the conformity finding regarding the plan and program from which the project derived; and,
- (c) the design. concept and scope of such project at the time of the conformity determination for the program was adequate to determine emissions; or, in lieu of sections (a), (b) and (c);
- (d) it has been demonstrated that the projected emissions-from -such project-when considered together with emissions projected--for the conforming transportation plans and programs, do not cause such plans and programs to exceed the emissions reduction projections and schedules when assigned to such plans and programs in the SIP.

4.05

Conformity of transportation plans, transportation improvement programs and transportation projects will be demonstrated when the plan, program or project meets the standards of Section 3.2 of these procedures and when:

- (a) the transportation plans and programs',
 - (1) are -consistent with' the most recent estimates of mobile source emissions; and,
 - (2) provide for the expeditious implementation of transportation control measures which may be required by the SIP, and,
 - (3) with respect to hydrocarbons and/or oxides of nitrogen, contribute to annual emissions reductions consistent with the reasonable further progress reductions required by section 182(b)(1) of the federal Clean Air Act.
- (b) the transportation projects come from a conforming transportation plan or program.

RULE VIII-5. Procedures

5.01 Transportation Plans

Any procedures for the determination of conformity will include DEM and DOT and be specified by the Technical Committee of the State Planning Council at the time of development of the plans.

Section 42-11-10 of the General Laws of Rhode Island calls for a "comprehensive strategic planning process and the preparation, maintenance and implementation of plans for the physical, economic and social development of the state." The State Planning Council provides policy guidance and coordinates these activities. These conformity procedures will adhere to the public participation process utilized by the State Planning Council.

5.02 The Transportation Improvement Program

These procedures apply to the Transportation Improvement Plan (TIP) and any amendment to the TIP.

- (a) The TIP will contain a discussion of all air quality related projects, such as transportation control measures, and their estimated HC and/or NOx emission impacts. Before inclusion in the TIP, each project is subject to the review described in Section 5.3 of these procedures.

(b) In preparing the TIP, DOT and the Division of Planning will assign high priority to projects that benefit air quality. In preparation of the TIP, DOT, in consultation with DEM, will identify projects that have an effect on air quality. There will be reasonable opportunity for public comment and review of the TIP and conformity determinations.

Projects under consideration will be legally posted in a major newspaper.

The State Planning Council will consider air quality effects in final project selection for the TIP. After consultation with DOT and the Division of Planning, DEM may submit any projects that are adopted to the U.S. Environmental Protection Agency as revisions to the State Implementation Plan.

(c) The draft TIP will be prepared by the Division of Planning and DOT, in consultation with the DEM. The Division of Planning will send a copy of the draft TIP to DEM for final review at least 15 business days before the TIP is to be submitted to the State Planning Council.

(d) DEM will review the TIP for conformity with the standards and criteria of these procedures.

(e) DEM will submit the results of its review to DOT and the Division of Planning. DEM, DOT and the Division of Planning may meet to resolve any outstanding issues before OEM's review is complete. DEM's review will be discussed in the air quality section and presented as an appendix to the TIP. The TIP will then be submitted to the State Planning Council for approval.

(f) If after meeting with DOT and the Division of Planning, DEM does not find the TIP to conform to these procedures, the draft TIP will be submitted to the Technical Committee of the State Planning Council along with the comments of DEM, DOT and the Division of Planning. The Technical Committee will review the draft TIP and the comments received and make its recommendation to the State Planning Council.

(g) The State Planning Council will select the final set of projects for the TIP and review the TIP to assure it is in conformance with these procedures and the State Implementation Plan.

5.03 Transportation Projects

(a) The Transportation Project Air Quality Categories (Attachment 1) defines three categories for fair quality review of transportation projects. The Department of Transportation will determine which of the categories a project developed by DOT or other agencies best fits, based on the criteria in Attachment 1. DOT will initiate the Air Quality/Transportation Coordination Form (see Attachment 2) and send it to DEM for review.

(b) DEM will review the Air Quality/Transportation Coordination Form and, within 10 days, return the Form to DOT with a copy to the Division of Planning. OEM, as a result of its review, will either concur with the DOT determination or not concur.

(c) In the event DEM does not concur with the DOT determination, DEM, DOT and the DOP will meeting an effort to resolve any differences. When a project is placed in Category I or II, DEM, DOT and DOP will meet to agree on the details of the air quality analysis to be performed during the environmental documentation phase of the project.

(1) Disagreement about the category or level of analysis will be resolved by DEM.

(2) Differences about the description and nature of the project to be undertaken will be resolved by DOT.

(3) Differences about the outcomes of analysis and the impacts of projects will be the subject of appeal and presentation to the Technical Committee. At a public meeting, the committee will consider the reports of DEM, DOT and the MPO staff and will provide a recommendation to the State Planning Council. A two-thirds vote of the Council members present will be required before a project proposal is forwarded to the Governor.

CERTIFICATION

I certify that this document was adopted as a Rule of Procedure by the State Planning Council on February 11, 1993, in accordance with Section 42-11-10 (e) (4) of the General Laws.

Daniel W. Varin, Secretary
PCP, Registration No. 9

ATTACHMENT 1

TRANSPORTATION PROJECT AIR QUALITY CATEGORIES

Category I projects are those which may result in changes in carbon monoxide (CO) concentrations or HO or NOx emissions, to the extent such changes are quantifiable. Examples of such projects include, but are not limited to: highways on new locations, urban highways reconstructed to provide additional travel lanes or a better level of service, the addition of interchanges to existing freeways and any projects that substantially affect traffic patterns.

Air quality analysis will include a microscale CO analysis and mesoscale analysis for CO, hydrocarbons (HC) and oxides of nitrogen (NOx). Air quality analysis will be conducted for all alternatives under consideration, including the no build alternative. The air quality analysis for HC and NOx will be conducted in a manner consistent with reasonable further progress emission reduction requirements of the federal Clean Air Act.

Category II projects are those which have no significant effect on HC or NOx emissions but that may affect CO concentrations. Examples of such projects include, but are not limited to, improvements to arterial highways or intersections in congested urban areas.

Air quality analysis will include a microscale CO analysis. Category III projects are those which have no negative impact on CO concentrations or HO or NOx emissions. Examples of projects which may be placed in this category include those with very low traffic volumes, projects with no significant effect on traffic volumes or speeds, mass transit projects and planning and technical studies.

No air quality analysis will be required prior to inclusion in-the TIP.

**STATE OF RHODE ISLAND
STATE PLANNING COUNCIL**

**RULE IX
TRANSPORTATION PLANNING AND PUBLIC INVOLVEMENT PROCEDURES**

Rule IX-1 Purpose, authority, and scope

1.01 Purpose

This rule is intended to set forth procedures by which the public will be involved in transportation planning in Rhode Island, through a proactive process that is based on the following principles:

- opportunity for early and continuing public involvement;
- identification of, and contact with, as many persons and organizations as possible who are thought to be interested;
- seeking out and consideration of the needs of those traditionally underserved by transportation systems, such as low-income and minority households;
- inclusion of the general public by appropriate means, such as news releases;
- timely notice of meetings; and
- provision of complete information by the Division of Planning, and adequate staff support, given available resources.

The rule describes how the State Planning Council will comply with the transportation planning and public involvement requirements of:

- (a) the Intermodal Surface Transportation Efficiency Act of 1991, Public Law 102-240;

- (b) joint regulations of the Federal Highway Administration and Federal Transit Administration, 23 CFR 450 and 49 CFR 613, "Statewide Planning; Metropolitan Planning"; and
- (c) all other applicable statutes and regulations.

Designation of the State Planning Council as the single statewide Metropolitan Planning Organization for the state of Rhode Island, and conduct of transportation planning and programming on a statewide basis, require compliance with all requirements pertaining to both statewide and metropolitan planning. These will be merged wherever possible. Where two or more provisions on the same or similar topics differ, either all requirements will apply, or the more stringent requirement will govern.

1.02 Authority

The State Planning Council is designated as the Metropolitan Planning Organization (or MPO) by letter of the Governor dated February 21, 1974, and reaffirmed by letter of the Governor dated June 9, 1992.

The State Planning Council is authorized to adopt rules concerning matters within its jurisdiction by Section 42-11-10(e)(4) of the *General Laws of Rhode Island*.

1.03 Scope

This rule applies to the following transportation activities and documents, to the extent that these are the responsibility of the State Planning Council or the Division of Planning:

- (a) the Unified Planning Work Program, which is a discussion of the transportation and transportation-related air quality planning priorities, tasks, schedules, and products anticipated to be undertaken by various agencies in an area (see 23 CFR 450.314);
- (b) the Transportation Plan, a long-range (at least twenty years) plan that combines the statewide transportation plan (see 23 CFR 450.214) and metropolitan transportation plans (see 23 CFR 450.316 and 322); and

- (c) the Transportation Improvement Program, a short-range (at least three years) program that combines the statewide transportation improvement program (see 23 CFR 450.216) and metropolitan transportation improvement programs (see 23 CFR 450.324 and 328).

This rule does not repeat all procedures and requirements for the unified planning work program, transportation plan, transportation improvement program, and other matters, that appear in statutes and other regulations. Provisions of special significance may be referenced, but this rule must be used in conjunction with other documents in order to encompass the entire body of law and regulation pertaining to transportation planning and programming.

This rule does not address activities of the Rhode Island Department of Transportation, such as project-level design studies, that may be related but are covered by other regulations and procedures.

The provisions of this rule are not meant to limit public involvement activities. During the course of transportation planning work, additional methods may be used to encourage public participation, beyond the basic framework of procedures described here.

Rule IX-2 Definitions

For purposes of this Rule, terms are defined as follows:

- 2.01 Department of Environmental Management or DEM:** the agency established by Section 42-17.1-1 of the *General Laws*
- 2.02 Division of Planning, Division, or Staff:** the agency established by Section 42-11-10(f) of the *General Laws*
- 2.03 Department of Transportation or RIDOT:** the agency established by Section 42-13-1 of the *General Laws*
- 2.04 Local comprehensive plan:** the plan adopted by a city or town and approved by the state in accordance with Chapter 45-22.2 of the *General Laws*

- 2.05 Major Transportation Investment:** a highway or transit improvement of substantial cost that is expected to have a significant effect on capacity, traffic flow, level of service, or mode share at the corridor or subarea scale, such as a limited-access, principal arterial highway or a fixed-guideway transit facility that is newly constructed, is extended by at least one mile, or is increased in capacity through an added lane or substantially increased service, as defined in 23 CFR 450.104
- 2.06 Rhode Island Public Transit Authority or RIPTA:** the transit operator established by Section 39-18-2 of the *General Laws*
- 2.07 Rules of Procedure or Rule:** the regulations, standards, procedures, and other statements adopted by the State Planning Council as provided for by Section 42-11-10(e)(1) to govern the actions of the Council, its committees, the Division of Planning, and those who deal with these entities on matters specified by rule
- 2.08 State Guide Plan:** a collection of plan elements (on topics such as land use, economic development, housing, transportation, and water supply) containing goals, policies, strategies, programs, or projects, adopted by the State Planning Council as provided for by Sections 42-11-10(c)(7) and (e)(1) of the *General Laws*.
- 2.09 State Planning Council or Council:** the policy body for centralized state planning, established by Section 42-11-10 (b)(2) of the *General Laws*.
- 2.10 Technical Committee:** the body that serves as a permanent advisory committee to the State Planning Council, established by Section 42-11-10(e)(5) of the *General Laws*.
- 2.11 Transportation Advisory Committee or TAC:** the body established by Part IX-9 of this Rule.

Rule IX-3 Unified Planning Work Program

3.01 Description (reference: 23 CFR 450.314)

The Unified Planning Work Program (UPWP) includes a discussion of transportation issues and needs and a coordinated summary of transportation planning tasks, schedules, and products that respond to these needs. All agencies that undertake federally-assisted transportation planning are included in the UPWP.

3.02 Formulation

Preparation of the UPWP will be initiated each year by one or more public meetings. Information will be presented on, and the public will be invited to discuss, topics including the following:

- (a) a review of planning assumptions and the plan development process (reference: 23 CFR 450.322 (c));
- (b) transportation issues and processes (reference: 23 CFR 450.316 (b) (1)(ii));
- (c) public access to technical and policy information used in transportation planning (reference: 23 CFR 450.316 (b)(1)(iii) and "Rules and Regulations Governing Access to Public Information," R.I. Department of Administration, September, 1991);
- (d) methods for identifying and responding to the needs of those underserved by existing transportation systems (reference: 23 CFR 450.316 (b)(1)(vi));
- (e) review of public involvement processes and results (reference: 23 CFR 450.316 (b)(1)(ix)).

3.03 Adoption

Unified Planning Work Programs are adopted, modified, and repealed by the State Planning Council in accordance with:

- (a) Rule I-12.03 of the Council's Rules of Procedure, and
- (b) 23 CFR 450.314 (which requires MPOs to develop Unified Planning Work Programs).

Rule IX-4 Transportation Plan

4.01 Description (reference 23 CFR 450.214 and 450.316)

The transportation plan comprises one or more elements of the State Guide Plan. The technical planning procedure used is generally outlined in Section 46-11-10 (c) of the *General Laws*; it includes establishing goals, selecting policies, preparing long-range and short-range plans or programs, and evaluating the implementation of plans. Contents of the plan(s) include consideration of all of the factors listed in 23 CFR 450.208, 450.316 (a) (such as preservation of existing transportation facilities, consistency with energy conservation programs, the need to relieve and prevent congestion), 450.322(b) (such as projected travel demand, adopted congestion management strategies, identification of pedestrian and bicycle facilities), and others as needed.

4.02 Formulation and Participants

Transportation plans and amendments will be formulated through a public process by the Transportation Advisory Committee established in Part IX-9 of this rule and the Division of Planning. The public meeting(s) held to develop the Unified Planning Work Program under Part IX-3 of this rule will be a starting point for many proposals. The Committee will encourage public participation through other means (such as regional meetings, workshops, and surveys), appropriate to the plan or amendment topics. Others involved in this activity include:

- (a) the Technical Committee;

- (b) appropriate standing or special committees established by the State Planning Council as authorized under Section 42-11-10 (e)(5) of the *General Laws*;
- (c) DEM, RIDOT, RIPTA, and other interested state agencies;
- (d) other public and private transportation service or facility operators, including the Rhode Island Airport Corporation, the Rhode Island Turnpike and Bridge Authority, bus companies, paratransit providers, freight rail companies, waterborne transit operators, and others;
- (e) representatives of transportation and other affected agency employees;
- (f) interested federal agencies, agencies and organizations in other states, and multi-state groups involved in transportation;
- (g) local officials, such as chief executives, planning directors, planning board chairmen, public works directors, public safety officials, and conservation commission chairmen;
- (h) Joint Municipal Planning Commissions established under Chapter 45-22.1 of the *General Laws*, and Regional Councils of Local Governments established under Chapter 45-43 of the *General Laws*;
- (i) organizations interested in transportation, the environment, and the economy;
- (j) persons with disabilities limiting transportation access or use; and
- (k) citizens/the general public, including anyone who requests to be involved.

4.03 Approval

Transportation plans are adopted, modified, and repealed by the State Planning Council in accordance with:

- (a) Rule I-12.01 of the Council's Rules of Procedure (which requires one or more public hearings); and
- (b) 23 CFR 450.316(b) and 322 (a), (c), and (e) (which require a 30-day public comment period, demonstration of response to public input, adoption by the MPO, publication and distribution of the plan, and updating at least every three years).

Rule IX-5 Transportation Improvement Program (reference: 23 CFR 450.216 and 450.324 through 332)

5.01 Description

The Transportation Improvement Program (TIP) is a short-term program of transportation strategies, actions, and projects that are drawn from the Transportation Plan and scheduled for implementation. Both text and tables are used to present and explain the program and to demonstrate compliance with all applicable requirements.

- (a) Scope: A single, statewide TIP will be prepared whenever possible. If necessary, a TIP may be prepared for only part of the state, but it must be extended to include the entire state as soon as essential information and the time necessary to comply with all applicable procedural requirements are available. A TIP may not, however, address only a single mode of transportation.

Rhode Island's TIP shall be comprehensive, including roads and bridges, public transit of all types, demonstrations, enhancements, bicycle and pedestrian facilities, marine transportation and ports, airport improvements, commuter and freight rail, and others. Programs for management systems and air quality will also be included. This will present a broadly intermodal program, provide more information, and allow for more effective and efficient

review. Other projects and actions of statewide or broad substate concern will also be included, although not utilizing federal funds.

- (b) Time Frame: The TIP must present a three-year program, by year, and may present additional future years. In Rhode Island it shall be prepared every two years. Projects listed in the first two years (the "Biennial Element") shall be eligible to receive federal funding; these shall be the projects on which official action is taken. Projects listed in the third and future years shall require amendment or approval in a future TIP before being eligible. Placement in the third year implies a priority and schedule for implementation, but it is not a reservation of funds, since the entire TIP list will be reconsidered every two years.
- (c) Description of Projects: Each project shall be briefly described in the TIP. The intended nature or scope of work shall be indicated, unless environmental studies to determine this have not been completed. The location (route number or name, termini, city or town) and length (in miles) shall be specified when applicable.

Projects that are intermodal shall be so identified.

Projects that have an effect on air quality shall be identified and analyzed in accordance with air quality conformity regulations (see Rule VIII). Other environmental effects may have been analyzed in the transportation plan, in preliminary project studies, or in the project request that was submitted; or they may remain to be analyzed pursuant to the National Environmental Policy Act as part of the phase of work that is being programmed.

The phase of work programmed for each year shall be shown (except when it is not applicable, such as for transit operating assistance), as follows:

E environmental and feasibility studies, prior to selection of an alternative,

D - design/preparation of final construction plans,

R - right-of-way (property acquisition, relocation), and

C - construction.

- (d) **Project Costs:** The estimated cost for each project, by year, shall be shown. The total costs of the highway and transit programs for each year must be within the funding amounts expected to be available (authorized for that year or carried over), since federal regulations require TIPs to be "financially constrained."
- (e) **Order of Projects:** Projects shall be listed generally in order of priority. The Transportation Advisory Committee established in Part IX-9 of this rule shall develop overall criteria for ranking all projects, based on the goals and policies of the transportation plan and other elements of the State Guide Plan. In showing priority of projects, consideration shall be given to their ranking score, their current place in RIDOT's design and construction schedule, and other factors indicating relative urgency or lack thereof. Thus, projects at the beginning of the list would provide the greatest air quality benefits (see Rule VIII-5.02 (b)), have the highest scores, and be ready to begin or continue the phase shown.

5.02 Formulation and Participants

5.02.01 The TIP shall be formulated through a public process, using numerous sources of information, advice, and project proposals. The public meeting(s) held to develop the Unified Planning Work Program under Part IX-3 of this rule shall be one source of ideas. Strategies, actions, and projects may be proposed for the TIP from several other sources, including the following (without limitation).

- (a) The public may submit proposals. Any proposer of a project must notify the chief elected official of the city or town in which it is located and must show that the project conforms with the local comprehensive plan.
- (b) Major recommendations for the state transportation system, drawn from the transportation plan, will be proposed by the Division of Planning.

- (c) Projects that benefit air quality, including all those to be adopted in the State Implementation Plan for air quality, will be recommended by the Technical Committee.
- (d) Projects for arterial highways, bridges, bicycle facilities, transit service, and others will be proposed from needs identified by RIDOT and RIPTA through their management systems (see Rule IX-7) and short-term studies.
- (e) Proposals shall be solicited from cities and towns. These must be consistent with local comprehensive plans prepared and approved in accordance with Chapter 45-22.2 of the *General Laws*. Local governments are urged to involve the public in the preparation of their recommendations through advisory committees, public meetings, and other methods. At a minimum, city and town governments shall hold a public hearing on projects that they intend to submit for the TIP, after public notice in accordance with local procedures.
- (f) Other local and regional organizations may propose projects. These include (without limitation):
 - (1) planning boards and commissions,
 - (2) Joint Municipal Planning Commissions established under Chapter 45-22.1 of the *General Laws*,
 - (3) Regional Councils of Local Governments established under Chapter 45-43 of the *General Laws*, and
 - (4) municipal and regional committees.

Any proposals by such organizations shall be submitted through the chief elected official of the city or town in which the project is located and shall be subject to the local public hearing required in the preceding section.

5.02.02 **Development of the draft TIP** is the responsibility of the State Planning Council, as MPO. It shall be a public process, including the following participants.

- (a) Citizens/the general public and interested agencies and organizations shall have opportunities for involvement as described throughout section IX-5 of this rule.
- (b) Cities and towns, through their chief executives, submit project proposals. Later, they review drafts of the TIP.
- (c) RIDOT and RIPTA provide information on projects. In particular, RIDOT supplies a list of highway funding projects, including locally requested projects, evaluated according to engineering criteria.
- (d) The Transportation Advisory Committee established in Part IX-9 of this rule shall work with the Division of Planning in preparing the draft TIP for recommendation to the State Planning Council.
- (e) A Transportation Enhancement Advisory Committee (TEAC) makes recommendations on projects for that funding category (for example, landscaping, signing, or pedestrian improvements separate from any highway project). The TEAC is appointed by, and advises, the Director of RIDOT. Members are selected for their interest in and knowledge about this type of project; for example, because of their background in historic preservation or environmental planning. The TEAC also solicits project proposals from local officials, and other entities, in addition to the overall TIP solicitation of cities and towns. The Committee has established criteria for rating proposals.
- (f) An Air Quality-Transportation Subcommittee, among other duties, evaluates projects for the TIP on the basis of air quality impacts, and makes recommendations on the use of Congestion Mitigation and Air Quality (CMAQ) funds, another special funding category. This subcommittee reports to the Technical Committee. It may be chaired by the Chief, Division of Air Resources, of the Department of Environmental Management (DEM). Other members may represent RIDOT, RIPTA, the Division of Planning, the Governor's Policy Office, the Rhode Island Lung

Association, the Rhode Island Trucking Association, the Providence Division of the Federal Highway Administration (FHWA), other Technical Committee members who may wish to participate, and others. This is intended as a small working group, which can reach out to other parties as needed. For example, the subcommittee can solicit other agencies or organizations for project proposals; hold public forums; and consult with the regional offices of the Environmental Protection Agency, Federal Transit Administration, and Federal Highway Administration.

5.02.03 **Consistency** with the State Guide Plan

New construction, new service, and major improvement projects must appear in the Transportation Plan or in other relevant elements of the State Guide Plan. Smaller-scale projects must be consistent with the description of the appropriate category or type of activity in the plan. The TIP narrative shall show how projects address the goals and policies of the transportation plan.

5.02.04 **Procedures** - Steps that supplement the procedural requirements of 23 CFR 450 and 49 CFR 613 include the following:

- (a) The Council shall include preparation, review, and approval of the TIP in the annual *Work Program* (see Rule I-12.03). This shall include a schedule for accomplishment of the requirements listed in all other sections of this rule, listing the steps and dates by which they must be accomplished. The schedule must allow sufficient time for preparation, public review, state adoption, and federal review and approval before the start of the next federal fiscal year on October 1. The Council shall send the schedule to all agencies involved, reminding them of the need for strict adherence to it.
- (b) The Division shall send a letter to each city and town chief executive, with copies to local planning and public works directors, requesting project proposals. The letter shall include information on the state transportation plan. It also shall provide information on the TIP, on the status of past proposals and current projects, on federal-aid program eligibility, and on the process for including any new project in the TIP. The letter shall ask local officials to present their proposals, which shall be shown to conform with their comprehensive plan. For each proposal, the community shall describe:

- (1) the priority within the city or town;
 - (2) the type of work needed;
 - (3) the environmental, social, and economic impacts expected, including whether the location is in or provides essential access to a state-designated enterprise zone;
 - (4) any intermodal connections; and
 - (5) the degree of local commitment, including any funding support or related projects.
- (c) The Division also shall contact transportation service or facility operators, including RIDOT, RIPTA, the Rhode Island Airport Corporation, the Rhode Island Port Authority and Economic Development Corporation (RIPA&EDC), railroad companies, and private transit providers, to obtain project proposals or information.
- (d) The Division shall give public notice of the opportunity to submit project proposals.
- (e) The Division and the Transportation Advisory Committee shall hold four public hearings, in different geographic areas of the state, to receive proposals for the TIP. All proposals to be included in the next biennial TIP must be presented at one of these hearings, except for Transportation Enhancements and Congestion Mitigation and Air Quality-funded projects, which have separate review processes.
- (f) The TEAC shall hold public workshops on enhancement projects.
- (g) The Division and the Transportation Advisory Committee shall accept, review, and rank project proposals. They shall request RIDOT to review highway projects (either proposed by local officials, drawn from the transportation plan, or internally generated) using objective engineering criteria, including safety considerations, level of service, and geometric and structural

adequacy. The overall ranking shall also use the descriptions submitted by local officials, giving weight to the factors listed in item b(3) above.

- (h) The Division, in cooperation with the Advisory Committee, shall prepare a draft project list, which is financially constrained, and then prepare the draft text.
- (i) RIDOT, following the air quality conformity procedures (see Rule VIII), shall send air quality forms on new projects to DEM. DEM shall complete and return the forms. The Division shall prepare an air quality conformity analysis of the TIP, send it to DEM, and include it in the draft TIP.
- (j) The Division and the Advisory Committee shall initiate the public review period. They shall arrange one or more public hearings. They shall reproduce copies of the draft TIP and shall send the hearing notice and/or draft to local officials, private transit providers, and others for comment.

Legal notice shall be given for each hearing. Additionally, the Division maintains a mailing list for public hearing notices. It includes all local chief executives, planning directors, public works directors, planning board chairmen, and conservation commission chairmen; various state agencies; private transit operators; the labor unions representing transit employees; organizations interested in transportation, the economy, and the environment; media outlets; and anyone who requests to be placed on the list.

- (k) The draft TIP shall be provided to the State Planning Council and Technical Committee.
- (l) The Division and the Advisory Committee shall hold the hearing(s). In a brief presentation for the public, they shall introduce the TIP and show its relationship to the state transportation plan. After allowing a subsequent written-comment period, which provides for a total public comment period of at least 30 days, they shall review all of the comments received. The Division shall prepare a summary of comments and provide it to the Council and Technical Committee.

- (m) The Transportation Advisory Committee shall prepare a revised draft TIP to recommend to the Council. The Division shall prepare a summary, analysis, and report on the proposed disposition of comments and shall provide this report and the revised draft to the Council and the Technical Committee. The Technical Committee may also make recommendations to the Council.

5.03 Approval

5.03.01 **Adoption:** Transportation Improvement Programs are adopted and amended by the State Planning Council in accordance with:

- (a) Rule I-12.01 of the Council's Rules of Procedure,
- (b) 23 CFR 450.220, which requires certain legal certifications as part of the submittal to federal agencies; and
- (c) 23 CFR 450.324 (b), which requires biennial updating and approval by the MPO.

5.03.02 **Intergovernmental Review** will be accomplished during preparation of the TIP. This review will be conducted in accordance with Rule IV and comply with the statutes and executive orders that that Rule implements.

5.03.03 **Approval by the Governor:** Following action by the Council, the TIP or amendment thereto shall be forwarded to the Governor for final action and submission to federal agencies as appropriate.

5.04 Amendment (reference 23 CFR 450.326)

5.04.01 **Procedure:** The TIP may be amended at any time through procedures that are consistent with those in Section 5.01 through 5.03 of this Rule, adapted to meet the need for full consideration and public involvement as determined by the type and character of the modification under consideration.

- (a) Proposals to add, delete, or modify strategies, actions, or projects that would involve a substantial functional, locational, and/or capacity change must be made through amendment of a TIP.
- (b) Amendments shall not be required for the following actions:
 - change in federal funding category from that originally intended;
 - change in project length (miles) that does not significantly affect travel patterns, air quality, or the scope of work;
 - addition of incidental right-of-way work (phase R) when construction has already been programmed in the Biennial Element.

5.04.02 Public Involvement: Requirements for public involvement apply to proposed amendments except that in place of public hearings, the Division may provide for public review of amendments at a public meeting of the Transportation Advisory Committee or the State Planning Council. (Either a hearing or a meeting must be held, however.) The proposer of an amendment shall be responsible for preparing a notice with a description of the proposal, for mailing the notice to the Division's transportation mailing list, and for arranging publication of the notice in the newspaper at least 30 days in advance.

5.04.03 Consistency: Amendments must meet the requirement of Section 5.02.03 (consistency with the State Guide Plan). Additionally:

- (a) Requirements for air quality conformity review shall apply to proposed amendments. Proposals shall not be acted on until the Division receives completed air quality forms (when required) from DEM.
- (b) Requirements for financial constraint shall also apply to amendments. In order to meet financial constraints, proposals may need to be accompanied by amendments deleting or reducing the cost of other projects in the TIP.
- (c) Proposed amendments that represent Major Transportation Investments are discouraged; these should be considered through the procedures set forth in Sections 5.01 through 5.03 of this Rule. The Council may, however, accept

a proposed Major Transportation Investment for consideration as an amendment. In such cases, the provisions of Rule IX-6 apply.

Rule IX-6 Major Transportation Investments (reference 23 CFR 450.318 and 450.322 (b)(8))

6.01 Identification

Strategies, actions, or programs that constitute major transportation investments must be identified either in the transportation plan or in preparing a TIP. The Council will so designate those potential or proposed investments at the earliest feasible time. Essential studies must be completed for such investments prior to scheduling their implementation in the TIP.

6.02 Participants and Procedure

Any implementing agency may undertake a major investment study. Steps that must be included (without limitation) are:

- (a) determine the objectives of the study, its character and extent, and the broad design concepts to be considered;
- (b) identify the parties that may be interested and facilitate their participation throughout the study; and
- (c) determine the public involvement process or methods to be used. At a minimum, citizens and interested parties shall be given reasonable opportunity to contribute to the study design, shall be informed of study progress and results, and shall be invited to at least one public hearing on the study.

6.03 State Planning Council Approval

The State Planning Council must approve the design of a major investment study upon completion of steps (a) through (c) in section 6.02 of this Rule. This function may be delegated to the Technical Committee or to the Division of Planning in specific instances.

The Council must then accept the completed study before scheduling implementation or other major action in the TIP. A request that a study be accepted must be accompanied by written certification by the preparer that the requirements of this Rule and other applicable statutes and regulations have been complied with.

Rule IX-7 Management Systems (reference: 23 CFR 450.320)

7.01 Responsibility

Management systems are part of the transportation planning process. These systems are established and maintained by RIDOT, RIPTA, and other appropriate agencies.

7.02 Evaluation

Reports on periodic evaluation of these systems as required by 23 CFR 450.320 (d) shall be provided to the State Planning Council.

7.03 Information

The Council will request information on the congestion management or other management systems as needed to carry out its responsibilities in transportation planning and programming.

Rule IX-8 Conformity Determinations

8.01 Applicability

The State Planning Council will make a determination of conformity with the requirements of the State Implementation Plan for Air Quality at the time of adoption or amendment of a transportation plan or TIP (reference 23 CFR 450.322 (d) , regarding plan conformity, and 324 (b), regarding TIP conformity; and 40 CFR 51, the EPA conformity regulations).

8.02 Procedure

Conformity determinations will be made in accordance with Rule VIII of the Council's Rules of Procedure. The Council shall request the advice of the Department of Environmental Management, Division of Air Resources, on each conformity determination under consideration. If significant comments are received as a result of the interagency consultation process, a summary, analysis, and report on the disposition of comments shall be included in the final plan or TIP.

Rule IX-9 Transportation Advisory Committee

9.01 Purpose and Authority

The State Planning Council will encourage public involvement in transportation planning and programming in a variety of ways that are appropriate to each situation. One principal method is that the Council shall appoint a Transportation Advisory Committee to assist in setting goals, identifying issues, analyzing the advantages and disadvantages of alternative courses of action, evaluating impacts, recommending policies, strategies, or projects, and monitoring progress or results of actions taken.

The Council is authorized to "establish advisory committees and appoint members thereto representing diverse interests and viewpoints as required in the state planning process and in the preparation or implementation of strategic plans" by Section 42-11-10 (e)(5) of the *General Laws*.

9.02 Appointment and Officers

9.02.01 Membership: The number of members of the TAC shall be determined by the Council and may be changed from time to time as deemed necessary by the Council. Nominations and appointments shall be made in accordance with Rule I-15 of the Council's Rules of Procedure. Members shall reflect a diversity of geographic parts of the state and of transportation interests, such as user groups, environmental and transportation organizations, the construction industry, local officials, and interested citizens. Members shall include at least four local government officials, RIPTA, DEM, and the Department of Economic Development. Members shall serve for three-year terms and may be reappointed.

9.02.02 Officers:

The Chair and Vice Chair of the TAC shall be appointed by the Council.

The Secretary of the TAC shall be designated by the Secretary of the Council and need not be a member of the TAC.

9.03 Purposes

The TAC shall have two principal purposes: to encourage early and continuing public involvement in the transportation planning process; and to develop, with the Division of Planning, the transportation planning documents that are the responsibility of the State Planning Council.

9.03.01 General: The TAC's purposes may require it to engage in any of the following activities: to conduct workshops and formal and informal meetings; to distribute and collect information; to meet with a governmental agency, an organization, or individuals; and to take other actions necessary to advise the Council. Public hearings are usually conducted by the Council but may be conducted by the TAC upon a specific request by the Council.

9.03.02 Topics: The TAC may advise or assist the Council in any or all of the following areas, as described elsewhere in this Rule, in 23 CFR 450, or in other documents. The TAC, in addition to responding to Council requests, shall take a proactive role in advising the Council on transportation planning matters.

- (a) Unified Planning Work Program,
- (b) Transportation Plan,
- (c) other elements of the State Guide Plan that may relate to or be coordinated with transportation plans,
- (d) Transportation Improvement Programs,
- (e) Transportation Enhancement Advisory Committee,
- (f) Air Quality - Transportation Subcommittee and conformity determinations,
- (g) Major Transportation Investments,
- (h) Transportation Management Systems,
- (i) the public involvement process, and
- (j) other transportation matters of interest.

9.04 Functions

The TAC's basic functions will include the following:

- (a) holding the one or more annual meetings on the Unified Planning Work Program and planning priorities and issues, and advising on development of the UPWP (see Part IX-3 of this rule);
- (b) overseeing development of, and public involvement in, the biennial TIP, including the regional public hearings on project proposals, detailed review of projects, and the public hearing(s) on the draft TIP (see Part IX-5 of this rule);
- (c) initiating the triennial update of the transportation plan, and overseeing its development and public involvement (see Part IX-4 of this rule);

- (d) evaluating the effectiveness of public involvement procedures, on an annual basis (reference: 23 CFR 450.316(b)(1)); and
- (e) other related functions.

The TAC shall exchange information with, and coordinate its work with, other committees such as the Technical Committee, the Air Quality-Transportation Subcommittee, and the TEAC.

The TAC shall be required to fulfill its functions within schedules and deadlines for these planning documents.

9.05 Procedures: The TAC will operate in accordance with the following procedures.

- (a) The TAC shall comply with all substantive and procedural requirements of the statute and regulations listed in Section IX-1.01 of this Rule, other applicable statutes and regulations, and the Council's Rules of Procedure.
- (b) The Secretary of the TAC shall maintain its files and mailing list, publish and distribute meeting notices and agendas, record and file minutes, and transmit documents from and to the Council.
- (c) The TAC shall establish more specific procedures for conducting its activities in a manner that will enhance public involvement; for example, regarding meeting times, places, and opportunities for participation.